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Friday, April 16, 2010

ADMINISTRATOR JACKSON

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EPA rules on lead paint in home renovations will soon take effect (*Washington Post*)

By Deborah K. Dietsch
Special to The Washington Post
Saturday, April 17, 2010; E01

Hiring someone to renovate your older home is about to become more complicated and expensive. Starting on Earth Day, April 22, contractors working on almost all homes built before 1978 must prove they have the Environmental Protection Agency's stamp of approval to do the work -- or face fines of up to $37,500 a day.

A new federal rule aimed at reducing exposure to toxic lead-paint chips and dust requires renovators to be trained and certified in EPA-approved methods of containing and cleaning up work areas.

"We're scrambling to learn the procedures as quickly as we can," said contractor Ethan Landis of Landis Construction in the District. On Friday, he and three of his project managers were scheduled to learn the methods during an all-day course run by the Connor Institute in Gaithersburg, for $225 each. "Now that the deadline is here, the real costs are going to become evident," Landis said. "There is a huge upfront cost just for training alone."

The EPA estimates that its new rule will add $8 to $167 to the cost of the average interior remodeling job, but contractors say the expense to homeowners will be much greater. "The EPA has grossly underestimated the costs to comply on any job. I can see my labor costs go up by thousands of dollars," said Vince Butler, who runs Butler Brothers Corp. in Clifton and is president of the Northern Virginia Building Industry Association.

Butler estimates that the extra time and effort required for protecting, cleaning and testing construction areas in pre-1978 homes will add 5 percent to 30 percent in fees on small renovation jobs.

"Expect to add another $500 to $1,000 for remodeling a kitchen, painting a couple rooms or replacing several windows," Landis said. "That is the minimal additional cost to perform lead-safe work practices and associated documentation."

The EPA rule applies to almost every type of renovation -- from paint scraping to window replacement and carpet removal (which can disturb painted baseboards) --

carried out by contractors in pre-1978 houses occupied by young children and pregnant women.

As written in 2008, the regulations allowed some owners of homes built before 1978 to opt out of the requirements. Homeowners could sign a waiver stating that they had no children younger than 6 visiting or living in the home, that no pregnant women were residing there and that the property was not a child-occupied facility.

But a court settlement reached last year by the EPA and several advocacy groups, including the Sierra Club, led the federal agency to remove this opt-out provision from the rule to protect more people from lead poisoning.

The EPA is now seeking to amend the regulation so it would apply to all homes built before 1978, when lead paint was banned. The final determination regarding this revision will be made April 22, EPA spokesman Dale Kemery said.

That will mean only the most minor remodeling jobs are exempt from the regulation: interiors less than six square feet in size and exterior repairs made to areas smaller than 20 square feet.

Housing for the elderly and disabled (unless a child younger than 6 lives or will live there) and zero-bedroom dwellings such as efficiency apartments are also not affected by the rule.

Do-it-yourselfers still have an out: The EPA rule applies only to renovations performed by businesses for compensation. Still, the agency recommends that homeowners follow the procedures in its "Renovate Right" pamphlet, available at http://epa.gov/lead/pubs/renovaterightbrochure.pdf. Nine out of 10 homes built before 1940 still contain lead paint, according to the EPA. The soft metal was frequently used as a primary ingredient in oil-based house paint until the 1950s and 1960s, when it was replaced with titanium dioxide and latex paints became more available.

The EPA recommends testing for lead paint before renovating, but homeowners shouldn't assume the results will be reliable. "Commercially available test kits that are supposed to ensure that there is no lead paint in the home are inaccurate between 42 and 78 percent of the time," said Matt Watkins, an environmental policy analyst with the National Association of Home Builders.

Those inaccuracies put homeowners at risk for health ailments associated with exposure to lead, including nervous disorders and reproductive problems. Lead is especially toxic for young children, causing a variety of health problems as well as learning and behavioral difficulties.

In 1991, Louis Sullivan, then-secretary of the Department of Health and Human Services, went so far as to characterize lead poisoning as the "number one environmental threat to the health of children in the United States." The following year,

Congress passed the Residential Lead-Based Paint Hazard Reduction Act, which led the EPA to propose regulations designed to ensure that renovators would be properly trained in lead-safe work practices.

These procedures call for applying protective plastic sheeting to floors and other surfaces and extending the sheets a minimum of six feet in all directions from the location where the existing paint will be disturbed. Affected areas must be misted with water to minimize dust, and components must be pulled apart instead of pounded or hammered to prevent the spread of debris. Power sanders and grinders must be fitted with HEPA vacuum attachments to capture dust, and heat guns must be set below 1,100 degrees Fahrenheit. Workers are advised to wear respirators and disposable suits, gloves and shoe covers.

By April 22, the EPA estimates, 100,000 renovators will have been trained in such procedures nationwide. But that's not enough to meet the current need for certified remodelers, insists the National Association of Home Builders, which petitioned EPA Administrator Lisa P. Jackson this month to delay implementing the lead-paint rule.

"The fact remains that as hard as they try, our members can't get into training classes," Watkins said. "There are states with no training providers. There won't be enough remodelers, window installers, plumbers, painters or other contractors certified by the deadline."

Bob Bixler, a scheduler with the Connor Institute, said his company now offers 65 courses a week in locations across the country to keep up with the demand. "We are adding courses every day," he said. "The word about the rule didn't get to contractors very well and they are now trying to catch up."

However, Rebecca Morley, executive director of the nonprofit National Center for Healthy Housing, said contractors have had "plenty of warning" about the new rules, and she estimated that 150,000 will be trained by next week's effective date. "Countless children have already suffered the consequences of lead exposure due to delays in finalizing the rule," she said. "Any delay at this point is unnecessary and will only harm children for years to come."

In addition to ensuring that EPA-approved procedures are followed, certified renovators must check to see whether dust, debris or residue is present after the job is done. Then they are required to wipe disposable cleaning cloths, both wet and dry, over floors, countertops, windowsills and other surfaces and compare the cloths with a card distributed by the EPA. If the cloths match or are lighter than the color of the card, they indicate that the surfaces are considered adequately cleaned of dust, which could contain lead.

As part of the rules, contractors are required to keep records of a renovation project for three years to prove that their work was performed according to EPA-approved

methods. As for enforcing the rule, the "EPA will respond to tips and complaints and make sure firms are certified," Kemery said in an e-mail.

Said Butler: "We have to be our own policemen. When we see a job done outside the rules, we have to report it. That's the only way to level the playing field for contractors."

Like Butler, Landis worries about competition from untrained contractors. He predicts a backlash against the regulation from homeowners unwilling to pay more for remodeling during tough economic times. "Customers are going to be tempted to hire uncertified contractors because of the extra costs," Landis said. "You are going to have customers who won't want to pay a premium, and you are going to have contractors who are willing to be fined to get the work."

To search for certified renovation firms by Zip code, go to the EPA's referral site, http://cfpub.epa.gov/flpp/searchrrp_firm.htm.

America's Great Outdoors to focus on U.S. conservation (*Washington Post*)

By Juliet Eilperin
Washington Post Staff Writer
Thursday, April 15, 2010; 9:06 PM

President Obama will launch the America's Great Outdoors initiative Friday, an attempt to reshape U.S. conservation policy at a time when the nation is facing new environmental threats but the government is hard-pressed to afford new spending programs.

While the memorandum Obama plans to sign is short on policy details, officials said it will sketch out broad goals the administration hopes to pursue over the next few years: forming coalitions with state and local governments as well as the private sector, encouraging outdoor recreation by Americans, connecting wildlife migration corridors and encouraging the sustainable use of private land.

Four administration officials -- Interior Secretary Ken Salazar, Agriculture Secretary Tom Vilsack, Environmental Protection Agency Administrator Lisa P. Jackson and White House Council on Environmental Quality chair Nancy Sutley -- will spearhead the effort.

"It's really about getting people to think about the great outdoors again, and recognize what a tremendous asset it is to our country," Vilsack said in an interview.

American children are spending half as much time outside as their parents did, according to the Interior Department, and the country loses 2 million acres a year to development. Government officials worry about the impact of such land conversion on natural resources: The Maryland Office of Planning projects that more land in the region

surrounding the Chesapeake Bay will have been converted to housing between 1995 and 2020 than in the previous 3 1/2 centuries.

Sierra Club Chairman Carl Pope, among the environmental leaders planning to attend Friday's daylong conference to launch the initiative, said he hoped a broad coalition of partners will be encouraged to reengage on public lands issues. Roughly 600 leaders from a range of sectors -- including ranching, sporting and recreation groups as well as state, local and tribal governments -- will attend the meeting and participate in breakout sessions to discuss policy ideas.

"This is about who's in the room, not what's prepared before you get in the room," Pope said.

Salazar noted that President Theodore Roosevelt held the first national conservation conference in 1908, and that that meeting "launched all of the conservation legacy the U.S. enjoys today."

It remains unclear how much the federal government can afford to spend on such programs in the future. The National Park Service alone estimates it would need an extra $9.5 billion to afford its day-to-day operations and maintain its regular services. Salazar said the fact that Friday's session will include business leaders such as REI President Sally Jewell shows "one of the things the business community understands is hundreds of jobs are created through outdoor programs."

Bill Meadows, president of the Wilderness Society, said officials should take into account how healthy ecosystems help regulate the climate and sustain water resources as well. "America's public lands serve as a smart 21st-century investment, because on top of all the benefits they already provide, they can sustain our communities into the future by anchoring local economies," Meadows said.

Several experts said they will be better able to judge the initiative some months from now, once specific policies are in place. "This conference is an inspiration, and we hope substantive policy pronouncements follow on its heels and lead to more wilderness protection," said Mike Matz, wilderness director for the Pew Environment Group.

April 15, 2010

Sen. Lautenberg Introduces Chemicals Reform Bill, Saying Current Regulation 'Is Broken' (*New York Times*)

By SARA GOODMAN of Greenwire
U.S. EPA would be given broad new authorities to target chemicals of concern and to regulate new and existing chemicals under legislation introduced today by Sen. Frank Lautenberg (D-N.J.).

The bill, called the "Safe Chemicals Act," would for the first time reform the 1976 Toxic Substances Control Act, or TSCA, to require manufacturers to provide information about chemicals in consumer products instead of presuming substances are safe until proven dangerous.

"America's system for regulating industrial chemicals is broken," Lautenberg said in a statement. "Parents are afraid because hundreds of untested chemicals are found in their children's bodies. EPA does not have the tools to act on dangerous chemicals, and the chemical industry has asked for stronger laws so that their customers are assured their products are safe."

The legislation would require manufacturers to provide a minimum data set for each chemical they produce, and EPA would have the authority to request any additional data it deems necessary to make a safety determination. At the same time, the bill seeks to avoid unnecessary or duplicative testing requirements.

EPA would also be required to prioritize chemicals based on that data set, looking at both exposure and hazard characteristics. The bill would instruct EPA to take quick action on those chemicals that clearly demonstrate high risk, and manufacturers would have to prove that a chemical is safe to keep it on the market.

EPA would be instructed to create a public database containing information about each chemical and EPA actions on that chemical, and the legislation would restrict which data can be claimed by industry to be confidential.

The bill also seeks to promote green chemistry by establishing a program to develop incentives for companies to make and use safer alternatives to some chemicals.

The key provisions in the bill largely mirror recommendations outlined by EPA Administrator Lisa Jackson last year, and at least in principle, they echo the reforms called for by environmental and health safety advocates.

"I'm really thrilled to know that today, today as we all sit here, in Congress for the first time we're going to see the introduction of a modern TSCA act, a brand new environmental law to deal with chemicals that are finding their way into our bodies, into our environments," Jackson said at a Washington, D.C., water conference today.

Richard Denison, a senior scientist at the Environmental Defense Fund and part of the Safer Chemicals, Healthy Families coalition, said the new bill represents a "sea change" from how TSCA currently manages chemicals.

"Most of the elements that our coalition has called for are in the bill, at least in skeletal form, and we think it provides a very good framework for advancing the debate on TSCA reform," Denison said. "There are several places where we're going to be seeking greater clarification or authority for EPA, however."

For example, Denison pointed to an exemption for how new chemicals are initially assessed within the principle requiring that manufacturers prove that a chemical is safe to keep it on the market. "This provision was one the industry sought to allow a chemical onto the market and then later assess it's safety," Denison said. "We think it's counterproductive."

Cal Dooley, the president and CEO of the American Chemistry Council, also highlighted areas his group will target as the bill moves forward, expressing concern about proposed changes to EPA's new chemicals program, as well as a provision allowing state pre-emption.

"[W]e are concerned that the bill's proposed decision-making standard may be legally and technically impossible to meet," Dooley said in a statement. "The proposed changes to the new chemicals program could hamper innovation in new products, processes and technologies. In addition, the bill undermines business certainty by allowing states to adopt their own regulations and create a lack of regulatory uniformity for chemicals and the products that use them."

EPA to offer assistance to Treece residents (*Pittsburg Morning Sun*)

Posted Apr 15, 2010 @ 10:15 AM
KANSAS CITY, Kan. —

The Environmental Protection Agency (EPA) today announced it has approved a modification of the cleanup plan for the Tar Creek Superfund site in Oklahoma. The modification provides for the relocation of nearby residents in Treece, Kansas.

“Coping with this legacy of pollution has been an extraordinary challenge for this community. It's important that they have the support of their government, and we're happy to be able to offer assistance as they relocate to a safer, healthier place,” said EPA Administrator Lisa P. Jackson. “We hope this marks the beginning of a new chapter of health and prosperity for the families of Treece.”

After several senior EPA officials visited Treece last year, Administrator Jackson determined that residents there face a unique and urgent threat from the legacy of pollution related to lead mining in their community. Residents of neighboring Picher, Oklahoma, which faced similar challenges and is also part of the Tar Creek Superfund site, were relocated starting in June 2008.

On Oct. 29, 2009, Congress provided EPA with an exemption from the Uniform Relocation Act, thereby allowing for the relocation of Treece residents. As a result, EPA identified relocation as the primary option for Treece residents due to similar environmental challenges to those faced by immediately adjacent Oklahoma residents. Today’s announcement is the next step towards making relocation arrangements.

On Jan. 13, EPA sent a letter to the state of Kansas on the status of potential relocation of Treece residents, outlining several steps the state of Kansas had to take. Those steps include:

- Meeting the state’s 10% share of the relocation cost and preparing to assume responsibility for the bought-out land
- Developing a plan for implementing the buyouts
- Holding public meetings to ensure residents are informed about the relocation process

EPA offered to help the state carry out these actions, and offered to make $300,000 available to help Kansas take these steps once a final determination is made.

The voluntary relocation assistance will be provided by the State of Kansas Department of Health and Environment. The estimated number of properties being considered is approximately 77 residential and business properties.

Local, state and federal representatives held a public meeting on March 8, 2010, to provide information about the buyout process and answer questions from local residents.

Copies of the Superfund Explanation of Significant Differences for the Record of Decision: Tar Creek Superfund Site Operable Unit 4, Ottawa County, Oklahoma, April 2010, are avail

April 14, 2010, 4:46PM ET

Officials: Bay blue crab population up 60 percent (*Associated Press*)

Story also appeared: *BusinessWeek*

By ALEX DOMINGUEZ
GRASONVILLE, Md.
Harvest restrictions helped the Chesapeake Bay's blue crab population rebound sharply in 2009, Maryland and Virginia officials said Wednesday as they announced a second-straight year of increases.

An annual winter dredge survey showed the crab population rose by 60 percent and Maryland Gov. Martin O'Malley said the once-decimated creatures are "actually roaring back."

"This is a great day. This is a day when we are able to announce that the Chesapeake Bay blue crab population is actually roaring back and actually coming back stronger than many ever would have predicted," O'Malley said during a news conference.

O'Malley noted a parallel increase in harvest numbers. He said the 2009 harvest was higher than in seven of the past 10 years, but cautioned that a lot of work lies ahead to help increase jobs that depend on the bay's health.

Virginia and Maryland started taking steps in 2008 to cut the crab harvest by a third, including shortening the season and not allowing hibernating pregnant females to be raked from the bay floor. Virginia officials also credit a crabber license buyback program.

"This is shaping up to be a tremendous environmental success story," Virginia Gov. Bob McDonnell said in a statement. "Our commercial crabbers' jobs and the waterman's way of life now appear to be on the path of sustainability."

The 2009 winter dredge survey saw a 50 percent rebound and they estimated there were 418 million crabs last year, up from 280 million the year before. The 2010 survey showed the crab population at 658 million.

Maryland officials said Wednesday that it's too early to say if restrictions will be eased. O'Malley said any changes were likely to be small tweaks rather than rollbacks of the restrictions.

Last week, the Chesapeake Bay Program issued a report card showing the health of the Chesapeake Bay has improved slightly, including improvements in the dwindling crab population.

EPA Administrator Lisa Jackson issued a statement after Tuesday's announcement saying it was "an important indicator of some improvement in the ecosystem."

The EPA is preparing a bay restoration strategy in response to an executive order issued last spring by the president and has said it will put the bay on a "pollution diet," establishing limits for various pollutants. Jackson said the agency's state partners have "shown tremendous leadership in following the science and making the tough decisions that have built a strong foundation for the work ahead."

The 2009 blue crab harvest totaled 53.7 million pounds, about 43 percent of the crab population and below the target harvest level of 46 percent.

Rom Lipcius, a crab researcher with the Virginia Institute of Marine Science, said harvest limits need to continue. "From here on, we have to maintain the population at these levels to ensure long-term sustainability and resilience of the Chesapeake Bay stock," he said.

Virginia watermen welcomed the announcement but said the industry has a ways to go to return to its heyday.

"We'll have to see what we catch," said Ken Smith, president of the Virginia Watermen's Association, which represents hundreds of crabbers. "Any time you have more crabs, that's good for the bay. I don't know how good that's going to be for the market."

Associated Press Writer Steve Szkotak in Richmond, Va., contributed to this report.

Bureaucratic bungling (*Battle Creek Enquirer*)

Agencies fail to set limits on meat residue

April 15, 2010

A recent audit by the U.S. Department of Agriculture's Office of Inspector General seems to justify public frustration with the federal bureaucracy's inability to adequately protect consumers.

The report found that despite a program established to test beef for chemical residues, meat containing harmful pesticides, veterinary antibiotics and heavy metals is making its way to market.

The audit, which expressed "growing concern" about the effects on people of eating such meat, said a primary issue with the USDA Food Safety and Inspection Service's cattle testing program is that it is dependent on other federal agencies to establish standards.

The auditor general's report said that the Environmental Protection Agency determines tolerance levels for human exposure to pesticides and other pollutants, while the Food and Drug Administration has the same responsibility for antibiotics and other medicines. Yet neither agency has set limits for potentially harmful substances, leaving the FSIS unable to enforce specific standards for meat.

Even when the agency is able to identify beef with high levels of pesticide or antibiotics, it seldom can stop distribution since there are no legal limits for such contaminants.

One particularly embarrassing example occurred in 2008, when Mexican authorities rejected a U.S. beef shipment because its copper levels exceeded Mexican standards, but the FSIS had no grounds for blocking the rejected meat from being resold in the United States.

The FSIS, EPA and FDA all need to carry out their responsibilities to better protect consumers. Their failure to do so could have long-term consequences for Americans' health.

Key Parts Of EPA Coal Ash Plan May Boost Bid For Non-Hazardous Rules (*Inside EPA*)

4/16/2010
EPA's pending proposal to regulate coal waste could boost industry's opposition to hazardous waste rules by outlining possible new approaches to resolving concerns over a lack of federal enforceability of non-hazardous rules, and including new data on major adverse economic impacts of hazardous rules on the beneficial reuse industry, informed sources say.

The proposal, due out later this month, is no longer expected to identify a "hybrid" approach -- regulating some disposal as hazardous and reuse as non-hazardous -- as EPA's preferred option for regulating coal waste under the Resource Conservation & Recovery Act (RCRA), the sources say. Instead, the agency is likely to offer a "level playing field" of options for controlling coal ash that includes the hybrid option among several others, one source says.

Among the options that EPA might include in the proposal is to regulate all coal waste as non-hazardous under RCRA subtitle D, which would continue to give states the lead authority on regulating storage and handling of the material. That is the approach favored by states and industry, but strongly opposed by environmentalists.

Under this option, EPA would seek to impose performance criteria that a state would have to meet within a certain deadline in order to continue to run the program. The approach would include a trigger for a federal takeover of state coal waste programs if a state is unable to meet the criteria, an informed source says.

By including the approach in the proposed rule, EPA could try to resolve lingering concerns about its legality, the source adds. Matt Hale, former director of the Office of Resource Conservation & Recovery, said at a September Environmental Council of the States (ECOS) meeting that while he believes subtitle D solid waste rules would be sufficiently protective of safety and the environment, EPA would have no authority to enforce such requirements (*Inside EPA*, Sept. 25).

Hale told ECOS that solid waste rules could be modeled on the existing subtitle D regulations for municipal solid waste, under which states issue permits and inspect solid waste landfills. But while this approach would be protective, "unfortunately our lawyers are telling us that under the statute we don't have the authority to write a subtitle D program that looks like the national solid waste program," he added.

Hale noted that any agency attempt to regulate coal waste under subtitle D other than including it in the municipal solid waste program would be fraught with problems in enforceability and permitting. Activists at the time said Hale's remarks bolstered their calls for hazardous waste rules under RCRA subtitle C.

Now, the informed source says that the proposal could outline steps to address questions over the lack of federal enforcement authority under subtitle D, though the source acknowledges that the approach remains legally questionable. "I don't know whether the lawyers have changed their minds and gotten more creative, and found a way to craft a federal override, or whether it is one that was suggested by someone else that seems credible," the source says.

EPA Administrator Lisa Jackson has not said what will be in the proposal, but has offered outlines for what the agency wants to achieve. For example, in a Jan. 7 speech to the Edison Electric Institute she said EPA believes "a strong federal presence is needed to provide accountability and backstop the states."

EPA wants to "put safeguards in place" to prevent coal ash impoundment failures such as the Tennessee Valley Authority ash spill in 2008 that could have cleanup costs of more than $1 billion, she said.

The proposal could further boost calls for non-hazardous rules by including a new economic impact analysis that might underscore industry's claims that any hazardous designation would "decimate" the coal ash beneficial reuse industry, by giving ash a stigma that would impair its use in products such as cement.

The new analysis will address potential impacts of a hazardous classification on the reuse industry and show a "staggering" adverse economic impact, compared with the agency's initial analysis that assumed no impact on recyclers from a hazardous waste designation, according to the informed source.

Further, the proposal may outline some type of screening requirement for beneficial reuse of waste that is not in a captured form such as cement. For example, if ash targeted for land application failed to pass a soil screening test "it would have to be treated as hazardous waste and couldn't be reused," the source says. "All encapsulated uses would be fine but a different set of criteria would be applied to less-encapsulated uses."

An EPA spokeswoman declined to provide details on the proposal and says there have been no changes to the timetable for the rule's release this month, but could not provide a specific date.

However, if EPA proposes a suite of options for regulating coal ash under RCRA without signaling a preference for the hybrid hazardous approach, that would spark certain outcry from environmentalists, who say if EPA does not articulate a preference in the proposal, that will only make it more difficult for the agency to finalize such an approach. Some environmentalists have expressed tacit support for the hybrid approach while others are calling only for hazardous waste rules.

Environmentalists have criticized the lengthy White House Office of Management & Budget (OMB) review of EPA's proposal, which has been with OMB since October. Groups from communities in Ohio, Alabama and Oklahoma who claim adverse impacts from nearby coal storage met April 12 with staff from OMB's Office of Information & Regulatory Affairs (OIRA) to urge quick release of the agency's proposal.

But the groups say they came away from the meeting disappointed. The groups added they "feel intimidated" by the coal industry and they suspect the outcome of the rule's direction "will be settled by the time it's announced," according to an April 12 press release on their meeting with the White House.

Industry has also held dozens of meetings with OIRA officials to urge against allowing any hazardous waste designation for coal combustion waste. Still, the community groups who support hazardous waste rules reported that OIRA staff "insisted that the

process is not over, but gave no indication of what is in the coal ash rule or when it might be freed from its delay in their office and finally reach the public comment stage." -- *Dawn Reeves*

EDITORIAL / OP-ED / COMMENTARY / LETTERS

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Excerpts from The Post's opinion blog (*Washington Post*)

April 16, 2010 Friday
Regional Edition
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Excerpts from The Post's opinion blog, updated daily at washingtonpost.com/postpartisan

Stephen Stromberg

The climategate theory that isn't

No doubt this week brought two additions to the list of alleged **climate change** conspirators (so far made up of climate scientists, European politicians, the media, socialists, one-world-government types, Al Gore and me): two independent panels assembled to examine the controversy following the e-mails stolen from the University of East Anglia's Climatic Research Unit last year. The e-mails, of course, were supposed to be the "smoking gun" that demonstrated a worldwide scheme among climate researchers to manipulate data and hoodwink the public.

The second panel, which released its report Wednesday, specifically examined "the integrity of the research published by the Climatic Research Unit," research that featured prominently in the Intergovernmental Panel on **Climate Change's** canonical work. The money line: "We saw no evidence of any deliberate scientific malpractice in any of the work of the Climactic Research Unit and had it been there we believe that it is likely that we would have detected it."

And, though there is still plenty of room to criticize the scientists involved -- for sloppy record-keeping, overreaction to the attacks of skeptics, etc. -- the report unsurprisingly found that some external criticisms of the work "show a rather selective and uncharitable approach to information made available by CRU."

Of course, a conspiracy theory can never really be disproved. Contrary evidence becomes just another piece in the scheme. See, for example, Gerald Warner's

particularly venomous screed about the findings of the "scam apologists" on the review panel. Other critics note that the head of the panel has some interests in clean energy. But the committee also included statistician David Hand, who praised the work of climate-skeptic hero Steve McIntyre at the press conference at which the report was released. Apparently Hand hadn't finished consuming his Kool-Aid.

Ruth Marcus

New book exposes global warming scam (*The Mercury*)

Friday, April 16, 2010

Over the years, I have read dozens of books by eminent scientists, climatologists and meteorologists, that exposed the lies that support the greatest fraud ever perpetrated in the modern era, "global warming." I have always wanted to read one that anyone could understand without having sufficient knowledge of the rather complex science involved.

I finally found that book and, would you believe it, the author is a friend! Every month I put aside time to talk with Brian Sussman, a former award-winning television meteorologist turned conservative talk show host on KSFO, San Francisco.

Like myself, Brian has long known that "global warming" is a bunch of horse hockey and, bless him, after the November 2009 revelations contained in several thousand leaked emails among the handful of perpetrators supplying the phony data to support "global warming", Brian sat down and wrote "Climategate", published by WND Books and the best $24.95 you will ever spend because it is the best book on the topic I have ever read.

Its official publication date is Earth Day, April 22.

To put it plainly, Brian got it right and he does so on every page as he walks the reader through what is often a complex topic. He does this by drawing on more than twenty years as a meteorologist and science reporter. In 2001, he shocked San Francisco viewers with a career change to become a conservative talk radio host.

What all the "global warming" fear-mongering is about is not climate science because "global warming" has nothing to do with climate and everything to do with a political agenda conjured up by Karl Marx and set in motion by Lenin and Stalin.

Brian initially takes the reader through the history of communism-socialism in order to put the environmental agenda in context. "It's all a lie. The earth is not warming, and climate always changes — and they know it."

"Global warming is the grandest of all tyrannical schemes," says Brian and he has the credentials and knowledge to back it up. The first chapter of "Climategate" is worth the

price of the book, but it just keeps getting better after that as he identifies the key players in a succession of environmental hoaxes that include, for example, the banning of DDT. Without this chemical miracle, an estimated 96 million people have needlessly died from malaria since 1973.

The most difficult thing to comprehend about the environmental movement is its fundamental hatred of mankind.

Environmentalism is a spawn of communism. The book will help you make the connection between the millions who died under the regimes that embraced it and the tsunami of lies that maintains environmentalism to this day.

It is no accident that Earth Day, April 22, is also the birth date of Vladimir Lenin, the Marxist who led the Russian revolution that led to the establishment of communism in 1917. The Soviet Union, a nation Ronald Reagan called "the evil empire," finally collapsed in 1991 from its inherent oppression and inability to produce real jobs, real goods, and a life free of an all-powerful state.

"Earth Day," writes Brian, "has never been a celebration of God's wonderful creation; instead it's always been an assault on man." That is why the central message of environmentalism is that man is a "cancer" on the earth and responsible for climate change. That is why its leading advocates want to reduce the earth's population by any means possible.

Neither mankind, nor the bogyman of carbon dioxide has anything to do with climate change. Right now the Obama administration's Environmental Protection Agency is moving to regulate CO2 as "a pollutant" and it has the authority under the Clean Air Act as the result of one of the worst Supreme Court decisions in modern times.

Regulating CO2 would make about the same sense as regulating oxygen on the grounds that it produces rust or that it is a component of fire. Regulating CO2 is crazy!

"Climategate" is the best book to date about this massive fraud, those who have lined their pockets advancing it, and the political agenda behind it; masterminded out of the bowels of the United Nations.

Order it! Read it! You shall know the truth and the truth shall set you free!

Alan Caruba is a N.J.-based business consultant, author and columnist. Read more at his Warning Signs blog, **http://factsnotfantasy.blogspot.com** You can e-mail him at **acaruba1321@gmail.com**

AIR

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EPA Proposes Lower San Joaquin Air Pollutant Threshold (*EP Magazine*)

- Apr 16, 2010

The U.S. Environmental Protection Agency on April 13 approved a revised New Source Review rule that requires new or modified facilities in the San Joaquin Valley (Calif.) to comply with federal permitting control and emissions offset requirements.

“Air quality in the San Joaquin Valley is consistently among the worst in the nation,” said Deborah Jordan, director of the Air Division for the EPA’s Pacific Southwest region. “New and modified facilities will now be subject to the most stringent requirements, which will contribute to the health of our communities.”

The stricter rule will affect approximately 350 facilities in the area emitting more than 10 tons per year of ozone producing pollutants rather than the current threshold of 25 tons per year. The approved action is part of an ongoing effort to improve air quality in the San Joaquin Valley, which is currently designated as an extreme nonattainment area for ozone or smog.

In addition, EPA revised the state’s Clean Air Plan to make it consistent with state law, which requires permitting of agriculture facilities emitting more than 5 tons per year of ozone-producing pollutants.

This rule change will be effective 30 days after the day of publication in the *Federal Register*.

Sierra Club calls on legislature to reject McDonnell amendment on air pollution bill (*Washington Post*)

The Sierra Club is calling on the General Assembly to reject an amendment made by Gov. Bob McDonnell (R) to a bill dealing with air quality that has special import to Northern Virginia. McDonnell striped language from a bill that had been added by Democrats in the state Senate that was designed to force coal-fired power plants in Northern Virginia to meet certain emissions limits.

For some time, Virginia has allowed coal-fired power plants that exceed the pollution limits allowed under their air permits to purchase pollution credits from plants elsewhere that were producing less than their limit. The cap-and-trade system is administered by the federal Environmental Protection Agency.

In 2006, the General Assembly amended the rules to allow the the state's Air Control Board to prevent coal-fired plants from taking part in the cap-and-trade system if they

were in parts of the state that had been labeled "non-attainment" zones by the EPA -- that is to say, in areas where air quality was particularly poor.

The only part of the state that has so far been labeled such a zone by the EPA is Northern Virginia, meaning the change particularly impacted the Mirant Power Plant in Alexandria. This year's bill, sponsored by Sen. Ryan T. McDougle (R-Hanover) and Del. Terry G. Kilgore (R-Scott), was designed to prohibit the air control board from preventing power plants from purchasing pollution credits anywhere, including in non-attainment areas.

They reasoned that if the EPA has designed a program that allows companies to purchase and trade pollution credits, why should Virginia's air control board stop it? Plus, they argued that while only one part of the state is now a so-called "non-attainment" area, the EPA could give other parts of the state the same label, dramatically impacting power plants all over the state.

But the bill did not emerge from the General Assembly unscathed. On a party line 21 to 19 vote, the Senate adopted an amendment by Sen. J. Chapman "Chap" Petersen (D-Fairfax) to retain the current system for plants in areas of the state that had already been labeled non-attainment areas -- i.e., Northern Virginia. Without the option to buy the credits, plants in the region, including Mirant, would have no option but to abide by their mandated emissions limits.

"I just think there are some public health issues with expanding a plant that's located right smack in the heart of D.C.," Petersen said. "We've had this status quo for the last four years and I don't think it's hurting business or electricity rates."

Now McDonnell has taken action, removing Petersen's language. As a result, Mirant would once again be able to exceed emissions limits by participating in the EPA's cap-and-trade system and purchasing pollution credits from other plants.

The Sierra Club, which had been pushing McDonnell to veto the whole bill, now called on the General Assembly to reject McDonnell's action. "Rather than vetoing the bill as we requested, he's made matters worse by extending the reach of this anti-environmental legislation statewide to Northern Virginia which experiences the worst air quality in the state," said Glen Besa, director of the group.

Taylor Thornely, a spokeswoman for McDonnell, said the governor's change "makes Virginia law consistent across the state." She also said the bill helps bring Virginia law into compliance with a 2009 court ruling. In that case, a judge ruled that the Air Control Board exceeded its authority by preventing the trading of pollution credits; the board had previously only been allowed by law to prevent companies from purchasing credits from one another.

She also said McDonnell is committed to environmental protections, noting campaign promises to preserve 400,000 acres of Virginia land and improve the quality of the Chesapeake Bay.

Petersen said he is not certain if lawmakers will back his amendment or McDonnell's action. "It's going to be a little bit of a clash of the titans -- a fight between industry issues and environmental issues."

By Rosalind Helderman | April 15, 2010; 5:52 PM ET

APRIL 15, 2010, 2:15 P.M. ET

US Greenhouse Gas Emissions Fell 2.9% In 2008 - EPA (*Wall Street Journal*)

SAN FRANCISCO (Dow Jones)--U.S. emissions of carbon dioxide and other greenhouse gases fell 2.9% in 2008 over the previous year to just below 7 billion metric tons, the U.S. Environmental Protection Agency said Thursday.

The drop in emissions was driven by lower consumption of fuel and electricity, the agency said. In addition to carbon dioxide, heat-trapping gases include methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons and sulfur hexafluoride.

Gases in the atmosphere can contribute to global warming by directly absorbing and trapping heat from the sun in the Earth's atmosphere, and/or through chemical reactions that can transform a substance into other greenhouse gases, the EPA said.

Separately, the National Oceanic and Atmospheric Administration said Thursday that March 2010 was the warmest March on record, based on the world's combined global land and ocean surface temperatures, and that the period from January to March was the fourth warmest the planet has seen.

-By Cassandra Sweet, Dow Jones Newswires; 415-439-6468; cassandra.sweet@dowjones.com

EPA Staff Split Over Best Method For Defining Multipollutant Air Regulation (*Inside EPA*)

4/16/2010

EPA staff are split over the best method for defining a "multipollutant approach" to regulating emissions between one approach of focusing on emission sources and another that focuses on pollutant mixtures that produce adverse health outcomes, a crucial debate as EPA attempts a major shift toward regulating emissions on a multipollutant basis.

On a recent Board of Scientific Counselors (BOSC) conference call April 1, Dan Costa of EPA's Office of Research & Development told the agency's science advisers that EPA will attempt to come up with a common definition of a multipollutant approach for research purposes in a policy document to be prepared by mid-2011.

Regina McCarthy, head of EPA's Office of Air & Radiation (OAR), is a long-time proponent of multipollutant regulation, under which the agency develops rules that target several pollutants at once -- a strategy McCarthy pioneered at the state level as head of Connecticut's environment department.

McCarthy, speaking at an April 3 Johns Hopkins University event in Washington, DC, said she sees "tremendous opportunities in this clean air, clean energy agenda to basically do multi-pollutant strategies that look at how you reduce greenhouse gases but also get something truly green. When someone tells me clean energy, I don't think carbon alone I think lower criteria pollutants, lower toxics, cleaner air, and the ways in which we can be more creative is to think more multi-pollutant as we move forward."

McCarthy will further outline her vision for national multipollutant rules in a presentation at an April 26 Health Effects Institute (HEI) conference, an HEI source says.

But prior to McCarthy's speech serious questions remained about exactly how EPA should develop multipollutant regulations. While EPA has previously regulated more than one pollutant at a time -- for example through vehicle tailpipe emission rules -- there is no common agency definition of a "multipollutant approach" to regulation.

There is already debate over whether multipollutant regulation should mean addressing all six criteria pollutants at once, or whether it should be broader and also cover some pollutants addressed by air toxics rules.

But an EPA source says a bigger, more fundamental issue that the agency must address is whether a multipollutant approach should focus on emissions at a source, or on the mixture of pollutants people inhale. Crafting multipollutant rules to reduce what people actually breathe would more directly address adverse health effects of air pollution, but would be much more difficult from a regulatory standpoint, the agency source says.

The source says that OAR is leaning toward source-based emissions regulation on a sector-wide basis, "but others are saying one should look at health outcomes with multi-

pollutant contributors." Therefore "we are trying to come up with a way of approaching these [multipollutant issues] from a rational" perspective, the source says.

EPA has a hard choice to make over whether to focus its research on health effects of breathing ambient air, or on the composition of emissions from sources such as power plants or cars, an HEI source says. "That is the crux of the challenges we face," the source says. EPA is therefore likely to adopt "much more of a source-based approach."

Settling on a definition of a multipollutant approach is seen as vital to moving EPA toward a multipollutant strategy designed to better regulate several air pollutants at once -- a move backed by states, industry, activists and others.

States and industry say the approach would reduce the administrative burden in having to meet a slew of EPA air rules. Public health advocates say that a multipollutant approach can better address the risks posed by real-world mixtures of pollutants, which can be greater than the risks posed by pollutants individually.

Costa on the BOSC teleconference noted that while EPA has a legal mandate under the Clean Air Act to set individual standards for the six "criteria" pollutants under its national ambient air quality standards (NAAQS) program -- sulfur oxide (SOx), nitrogen oxide (NOx), ozone, carbon monoxide, lead and particulate matter (PM) -- the agency, public health experts and state regulators are looking to multipollutant regulation in the future.

In the past, clean air researchers have attempted to gauge the overall impact on health of multiple pollutants by looking at the effects of one, then adding the effects of another, and a third, creating so-called binary and tertiary analyses. These efforts fail to capture the true effect of a mixture of many different pollutants acting in concert, the EPA source says, leading some researchers to favor the so-called "big mixture" approach.

While this "big mixture" approach can provide a better understanding of the health effects of breathing polluted air, it does not readily translate into practical regulation, the source says. EPA will, however, consider the "research to health outcomes" approach in its forthcoming research strategy, the source adds.

The HEI source explains that EPA would have tremendous difficulty identifying the origin of pollutants people actually breathe in order to limit harmful effects based on a multipollutant inhalation approach. Once emissions leave the source, it is difficult to determine their relative contribution to pollution levels in ambient air, especially because precursor pollutants react in the air to form other harmful chemicals such as ozone.

The HEI source says that conducting NAAQS reviews every five years for the criteria pollutants is onerous for EPA, and also tough for state regulators and industry to implement. Some at EPA are nervous about the complexity of multipollutant regulation, including the greatly increased complexity of scientific assessments to back new rules, but over time the approach should actually be more efficient, the source argues.

In a recent sign of EPA's efforts to move toward multipollutant regulation, Bill Harnett of EPA's Office of Air Quality Planning & Standards in a March 30 presentation to the Western States Air Resources Council's spring meeting described a first-time pilot project in Detroit, "investigating the application [of] our technical tools/methods in a multi-pollutant, risk-based approach to control strategy development." *Relevant documents are available on InsideEPA.com.*

In his presentation, Harnett outlines a multipollutant approach that aimed to get greater reductions in fine particulate matter (PM2.5), ozone and hazardous air pollutants than could be obtained by a traditional approach based on regulating pollutants individually in state implementation plans (SIPs). He says the benefits of the multipollutant, risk-based control strategy showed themselves for PM2.5 and ozone to be approximately twice those of the SIP-based approach. Multi-pollutant-based controls were also more cost-effective than the traditional approach, Harnett says.

EPA has regulated more than one pollutant at the same time in past rules, the HEI source says, including tailpipe rules to cut hydrocarbons, NOx and PM. The agency is also working on a Clean Air Transport Rule to regulate power plant emissions of SO2 and NOx, to replace its vacated Clean Air Interstate Rule.

Sens. Thomas Carper (D-DE) and Lamar Alexander (R-TN) are also sponsoring a multipollutant bill, S. 2995, which is designed to cut power plant emissions of NOx, SO2 and mercury.

But the HEI source says an agency shift to true multipollutant regulation will require a "major mindset shift," because EPA is used to addressing pollutants on an individual basis, such as setting NAAQS.

One state air regulator agrees that "multi-pollutant control by sector is indeed a hot topic and one that makes a lot of sense" for states and industry, compared to the approach of setting pollutant-specific rules.

The National Academy of Sciences (NAS) in pair of reports issued in 2004 on air quality management and PM outlined a need for EPA to pursue more research on multipollutant issues, the HEI source says.

The source says that the reports reached the conclusion that at the least, EPA needs to include the criteria pollutants plus a handful of the air toxics the public is most widely exposed to. These toxics should include "benzene, butadiene and the aldahydes" at a minimum, while the whole suite of pollutants covered by multipollutant strategy should not exceed "a dozen pollutants at the outside" to keep it manageable, the HEI source says.

One clean air activist warns, however, that limiting the pollutants covered by a new strategy for the sake of practicality may not be sufficient. "The law is very clear -- you have to deal with the criteria pollutants *and* the air toxics," the source says of the Clean

Air Act. The source agrees, however, that a multipollutant approach focusing on health outcomes rather than sources' emissions would be more difficult to regulate.

A source with the American Lung Association also stresses EPA's obligation to consider the combined effects of all pollutants that could have a bearing on health. Pollutants can either amplify or negate the effects of others, and it is therefore necessary, if difficult, to better understand the interrelationships between them, the source says. "You have to study this at the molecular, the biological, and the health effects level," the source says.

Research into air pollutant interactions needs to become more "mechanistic," the source says, meaning that simply looking at health effects of polluted air is not enough. The source says there is a need for extensive new laboratory study work to determine how different combinations of pollutants impact health. This might even involve short-term human exposure studies, the source suggests. -- *Stuart Parker*

Fight Over EPA Refinery Emissions Plan Could Influence Risk Rule Review (*Inside EPA*)

4/16/2010
Industry and environmentalists are sparring over whether EPA's draft method to estimate refineries' emissions overestimates or underestimates the volume of air toxics released, a dispute that could influence broader agency efforts to revise a Bush-era rule to address remaining risk from the sector's air pollution and improve the accuracy of air toxics reporting across multiple industries.

Accurate information on the sector's emissions is important for the Obama EPA's reconsideration of a Bush-era rule to address the residual risk from emissions following the implementation of the industry's existing maximum achievable control technology standard. EPA in October proposed to uphold part of the rule setting standards for heat exchange systems, but proposed withdrawing the rest to develop a more "robust" analysis of refineries' emissions.

The agency earlier this year released a draft protocol that ranks measurement and estimation methods for emissions associated with a variety of refinery processes. EPA says the revised emissions protocol is designed to help federal, state and local agencies develop better emission inventories for refineries, which would provide key data for potential future rules or potentially be used to track compliance.

EPA closed the comment period for the draft refinery emissions protocol March 31 and is slated to issue its final decision on the withdrawal of the residual risk rule later this month, making it likely that the protocol will be used to reconsider the risk rule, if EPA finalizes the rule's proposed partial withdrawal.

EPA did not respond to a request for comment by press time, but the agency said in its October proposal that it was withdrawing the rule in order to address issues regarding "the representativeness of the emissions data" in the Bush-era rule, citing ongoing efforts "to gather better emissions information from the refining industry."

In addition, the American Petroleum Institute (API) and the National Petrochemical & Refiners Association (NPRA) in March 31 comments on the rule also claim the draft protocol could knock sources out of compliance with existing permits, consent decrees, or rules once the facilities' emissions are re-calculated based on the new protocol. API and NPRA ask EPA to add language to the protocol preventing such an occurrence.

The draft protocol outlines a hierarchy of methodologies to measure or estimate various refinery emissions sources and provides a listing of pollutants expected to be emitted by each source. The methodologies range from various types of direct monitoring at facilities to less-reliable so-called emissions factors, which are values used to estimate emissions when direct monitoring data is unavailable.

For example, for the purposes of calculating flare emissions, EPA ranks processes as: 1. Continuous composition and flow rate monitoring of the gas sent to the flare; 2. Continuous flow rate monitoring and periodic compositional analysis; 3. Continuous flow rate and heating value monitoring; 4. Engineering calculations; 5. Emissions factors based on energy consumption; and 6. Default emissions factors based on refinery or process throughput.

EPA says that direct measurement methods are available for flares -- which are used to burn off gases that cannot be otherwise controlled -- and that in other cases when the emissions must be estimated, protocol users should incorporate efficiency information for a specific flare under certain conditions, if available. For other flares, but only those operated properly, EPA assumes the combustion efficiency is at least 98 percent.

The agency in the draft says it continues to support this number and that it lacks adequate information to revise the efficiency estimate, even though "recent efforts to better characterize flare emissions include efforts to determine whether this combustion efficiency continues to be appropriate."

But refiners say the draft's flaring assumption overestimates emissions. API and NPRA said in comments that flares destroy more than 98 percent of emissions and EPA's method does not consider that additional hydrocarbons are converted to other products of combustion besides carbon dioxide.

"Accounting for all conversion of hydrocarbons to other species and the fact that 98 percent is the minimum combustion efficiency rather than the typical combustion efficiency, the standard assumption for emission estimates is that 0.5 percent of hydrocarbon sent to a flare is unconverted and this is the basis that should be recommended in the protocol," according to the petroleum industry group, which says that ignoring these additional hydrocarbon conversions "is technically incorrect and

would result in [volatile organic compound] and [hazardous air pollutant] emissions estimates three times higher than typical or appropriate."

Flaring is already contentious, with environmentalists claiming industry can minimize pollution and that refineries do not need to use flares as much as they do. Meanwhile, pending industry litigation could also -- if decided in industry's favor -- limit EPA's ability to mandate some flaring limits (*see related story*).

Environmentalists meanwhile claim that some of the draft protocol's assumptions about flaring and other refinery processes underestimate emissions. They also claim that the draft fails to respond to former Houston Mayor Bill White's (D) Data Quality Act petition -- granted by EPA in July 2009 -- asking the agency to make its refinery emissions inventories more accurate after long-standing concerns from both outside and within the agency.

"With respect to storage tanks, flares, combustion sources, delayed coking, and equipment leaks, the protocol is not consistent with EPA's commitment to the City of Houston because the protocol does not (1) provide guidance on the use of remote sensing technologies to measure emissions or a critical review of the extensive remote sensing data available; (2) refine or revise inaccurate emissions factors or even disclose potential bias in these emissions factors; or (3) provide guidance on estimating emissions for all sources," according to March 31 comments by the Environmental Integrity Project (EIP). *Relevant documents are available on InsideEPA.com.*

EPA in October 2009 launched a related process to reform its overall emissions factor program for a wide range of industry sectors in response to the Houston petition, and the regulatory agenda says EPA plans to issue a notice of proposed rulemaking for those reforms in August of this year.

EIP's comments say that revising tools to calculate emissions from flares -- along with storage tanks, delayed coking and equipment leaks -- "should be a top priority for EPA due to the toxicity of emissions from these process units and the fact the current emissions factors result in drastic under-reporting."

In particular, EIP says that EPA and refinery owners and operators should assume flare combustion efficiency no higher than 93 percent without demonstrating that the flare is achieving higher efficiency, and that EPA should develop a model of flare combustion efficiency that accounts for variables such as meteorological conditions, variable waste gas flow rate and composition, flare physical design, steam and air assist operation, and general maintenance -- operating parameters the group says were not specifically evaluated in previous studies that had identified a constant flare combustion efficiency of 98 percent. -- *Molly Davis*

Suit Over EPA Plan For SO2 Cuts Could Hinder Authority To Limit Flares (*Inside EPA*)

4/16/2010
Pending industry litigation over an EPA plan to reduce sulfur dioxide (SO2) emissions in Montana could hinder the agency's ability to mandate limits on flaring -- the combusting of excess emissions -- in other states because industry is challenging EPA's imposition of limits on flaring at four facilities, among other aspects of the plan.

Briefing begins in June in the U.S. Court of Appeals for the Ninth Circuit case *Montana Sulphur & Chemical Company (MSCC) v. EPA*. The suit challenges EPA's federal implementation plan (FIP), a federal air quality blueprint to bring Montana into attainment with the SO2 national ambient air quality standard. EPA issued the FIP -- including flaring limits -- after rejecting Montana's air quality blueprint, known as a state implementation plan (SIP).

MSCC is one of four facilities regulated by the FIP that would be subject to flaring limits applying at all times without exception, even for malfunction periods. The company is now pushing ahead with its long-pending suit after years of mediation efforts with EPA fell apart without reaching agreement.

Montana's SIP did not include flaring limits, and MSCC is challenging whether EPA can force states to limit flaring emissions, which are linked to maintaining plant safety or to malfunctions beyond operator control. Industry has long argued that flaring is crucial to release emissions that are otherwise impossible to limit.

In May 2002, EPA partially disapproved several provisions of the Billings/Laurel SO2 SIP, in particular the state plan's NAAQS attainment demonstration, for lacking emission limits for flares at MSCC and three other industrial sources. MSCC had challenged the SIP rejection in June 2002, but the parties entered mediation before briefing began.

Then, in April 2008 EPA moved forward to finalize a FIP that limits flare emissions at all four of the sources and requires sources to monitor in order to determine compliance with the limits. MSCC filed a petition for review of that agency action as well in June 2008, but again mediation began ahead of briefing.

An industry attorney says that industry hoped the FIP would be reasonable, but "because the FIP limits on flares in MSCC's view are just not workable limits, then we had a brief negotiation with EPA, and EPA said that they've thought about it and they're not really willing to negotiate, and so we're moving forward with briefing."

The source says that MSCC generally views EPA's actions as having overstepped statutory authority and micromanaged the state's attainment strategy, while ignoring

safety concerns and precedent in other SIPs. “In the FIP what EPA did was basically prohibit flaring,” the source says.

“Occasionally things go wrong, and people tend to flare, and particularly during startup and shutdown and malfunction [(SSM)], and that has always been allowed. . . . But in this FIP, for the first time in the country as far as we know, the EPA has outlawed flaring,” the source adds.

EPA does not comment on ongoing litigation, but the agency in its July 2006 proposal to establish an SO2 FIP for the Billings/Laurel, MT, area said that the agency was simply acting to fulfill mandatory duties under the air act, which does not allow the agency to create any “automatic exemptions” from SIPs.

“We are proposing that the flare limits will apply at all times without exception. We recognize that flares are sometimes used as emergency devices at refineries and that it may be difficult to comply with these flare limits during malfunctions,” according to the agency’s proposal.

According to court documents, opening briefs in the case are due June 11, the agency’s answering brief is due Oct. 22, and optional reply briefs are due Dec. 23.

Other industry groups have already signaled that whatever the 9th Circuit decides could set a precedent for EPA’s ability to impose flaring limits in FIPs. The National Environmental Development Association (NEDA) in a 2008 motion to intervene said “the disposition of the case will be cited as precedent in other EPA actions in other States directly bearing on the operation of safety flares and related safety equipment in its members’ plants.”

“A decision that [EPA’s] restrictions were reasonable could prejudice our right to challenge similar provisions in other jurisdictions for other equipment,” said NEDA in the 2008 brief.

“NEDA also submits that the FIP provisions at issue generally bear on all SSM procedures used by plant operators throughout the nation to minimize emissions into the ambient air and defend themselves against assertions that excess emissions during periods of SSM violate the Clean Air Act.”

The 9th Circuit March 10 rejected without comment NEDA’s motion to intervene and an American Petroleum Institute motion to intervene.

Energy, Utility Groups Challenge Novel EPA Short-Term NOx Standard (*Inside EPA*)

4/16/2010

Refiners and utilities are challenging EPA's recently issued nitrogen dioxide (NO2) standard, filing April 12 petitions with EPA and the U.S. Court of Appeals for the District of Columbia Circuit arguing that the standard is unjustified and could lead to unreasonably stringent permit limits.

The American Petroleum Institute (API) and the Utility Air Regulatory Group (UARG) say in their administrative petition for reconsideration that EPA should immediately stay and then reconsider the national ambient air quality standard (NAAQS) for NO2, due to the agency's "arbitrary and scientifically unjustified dismissal" of analysis by an industry consultant and the agency's alleged failure to specify implementation provisions, which the petitioners say could affect permitting. *Relevant documents are available on InsideEPA.com.*

"The failure to specify such requirements is of central relevance to the final NO2 rule because these and other implementation requirements establish the meaning of the new NO2 NAAQS," according to the petition.

Vehicles, power plants and other industrial facilities emit NO2, which contributes to the formation of fine particulate matter and ozone. EPA's Jan. 25 final standard for oxides of nitrogen, measured by NO2, was the first ambient air quality standard proposed and finalized by the Obama administration, though other NAAQS are under review.

EPA retained its existing annual average standard of 53 parts per billion (ppb) to protect human health against long-term exposure and also established a first-time one-hour standard of 100 ppb to protect against short-term exposures. The short-term standard is at the higher, or less stringent, end of the 80 to 100 ppb range EPA had proposed, but is within the range recommended by EPA's Clean Air Scientific Advisory Committee.

But API and UARG say in their petitions that EPA should have set the standard even higher if the agency had followed lawful procedures, arguing that the agency ignored valid scientific criticism of studies that formed the basis of the agency's finding that the short-term standard should be set at a level no higher than 100 ppb.

In addition, the industry groups say EPA's failure to promulgate several critical implementation provisions could jeopardize and delay the finalization of pending prevention of significant deterioration (PSD) permits and result in unreasonably stringent and unnecessary emission limits. The petitioners request that EPA stay the NAAQS while addressing these issues.

California Air Districts Eye GHG Permit Limits Prior To EPA 'Tailoring' Rule (*Inside EPA*)

4/16/2010

California air districts are pursuing efforts to mandate greenhouse gas (GHG) limits in permits for major industrial projects, in advance of EPA issuing its "tailoring" rule to apply GHG limits in prevention of significant deterioration (PSD) permits and the agency's indication it wants state and local regulators to be the primary permit issuers.

The air district plans could represent precedent-setting actions by regulators to target GHG emissions ahead of federal and state climate change programs.

PSD permits require major sources or major modifications to major sources to obtain permits for federally regulated pollutants. EPA officials are currently proposing a GHG "tailoring" rulemaking that will add GHGs to this list of pollutants requiring modified PSD permits.

EPA in a recently notice said it will delay first-time federal GHG permit requirements until 2011; however, the agency is simultaneously urging states to use their existing powers to begin considering mandatory efficiency measures in facilities' Clean Air Act permits to cut GHGs along with conventional air pollutants.

California's San Joaquin Valley air district recently held an initial meeting to discuss with stakeholders its possible takeover of the federal PSD permitting program and whether to implement GHG limits in those permits.

The district is seeking comments by April 27 on whether it should take over PSD responsibilities from EPA. According to a district presentation at the April 6 meeting, EPA wants the district to implement PSD permit requirements because EPA has insufficient permitting resources in the region, PSD permitting has been slow in some cases, and because future GHG permitting under PSD would add to EPA's workload.

A valley district source said officials planned to discuss April 6 the issue of GHG permitting under EPA's proposed GHG tailoring rule for the PSD program. "If the district takes delegation of the PSD permitting program, it would include any related GHG permitting requirements," the source said. The district source added that "we don't believe that EPA is urging states to implement GHG permit limits in advance of January 2011."

California Bay Area air district officials later this year are also expected to kick off meetings to discuss adding GHG limits in PSD and new source review rules, sources said.

Automakers Drop Vehicle GHG Rule Lawsuit But Wait On Post-2016 Limits (*Inside EPA*)

4/16/2010

Automakers have asked federal courts to dismiss their suits over California's vehicle greenhouse gas (GHG) rules for model years 2012-2016 due to a deal with the Obama administration to apply the state rules nationwide, but are reserving the right to file future suits over California's pending rules for model years 2017 and beyond.

The motions for dismissal, and the federal deal that brought them about, also may provide ammuntion to defendants in a related challenge by auto dealers to the California standards, but likely will not affect ongoing challenges to EPA's decision to grant California a Clean Air Act waiver to implement its own vehicle rules or the agency's finding that GHGs endanger public health, according to sources familiar with the case.

A joint motion to dismiss was filed April 6 in *Central Valley Chrysler-Jeep Inc. et al v. Goldstene et al*, in the 9th Circuit U.S. Court of Appeals, one of three challenges automakers had brought against states that implemented the California standards; automakers also April 7 moved to dismiss a case against Rhode Island, *Association of International Automobile Manufacturers et al v. Sullivan et al*, in the 1st Circuit. An attorney involved in the case says they have moved to dismiss a Vermont challenge, *Green Mountain Chrysler-Plymouth-Dodge v. Crombie*, in the 2nd Circuit, although documents in that case have not been posted online. The cases had been stayed since last year. *Relevant documents are available on InsideEPA.com.*

Negotiations among auto companies' representatives, California officials and members of the Obama administration last year produced an agreement in which EPA agreed to implement California's standards nationwide for model year 2012-16 vehicles. The deal, which aimed to avoid a "patchwork" of different standards in different states, maintained California's ability to implement its own rules for model year 2017-25 vehicles, which the state may adopt this fall.

In dropping their challenge to California's current rules, automakers maintained their ability to advance the same arguments in a legal challenge to the post-2016 rules. The motions to dismiss -- agreed to by plaintiffs and defendants in the cases -- make clear that "with respect to any future action challenging any state motor vehicle" GHG regulations, the "parties to this stipulation shall join in opposing such a motion" that would seek to dismiss a future case based on preclusive doctrines arguing that the dismissal of the current case resolves issues that would be in play in the future.

EPA and the Department of Transportation (DOT), which issued fuel economy rules in concert with EPA's vehicle GHG standards, are expected to begin developing federal rules for model years 2017 and beyond soon, although officials are remaining silent on how quickly they plan to detail their post-2016 approach. EPA has said development of the post-2016 rules will be an agency priority for fiscal year 2011.

CLIMATE CHANGE / GLOBAL WARMING

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Congress worked out health care. Is climate change next? (*Washington Post*)

April 16, 2010 Friday
Met 2 Edition
A-SECTION; Pg. A17
Maryland
Congress worked out health care. Is climate change next?
By Steven Pearlstein
Six weeks ago, it looked as if there was no chance that Congress would approve climate change legislation this year.

The bill that had passed the House was so long, so complicated, so punitive to the coal-dependent Midwest economy, involved so many political compromises and so much money to be redistributed by the federal government, that it became the whipping boy of choice for conservative politicians and commentators.

Passage of health-care legislation, however, may have changed all that.

Democrats and their liberal supporters saw how much good could be accomplished by not allowing the perfect to be the enemy of the good. And Republicans and the business lobby were reminded of the concessions they could have won but didn't by their decision to abandon bipartisan compromise and instead try to kill the legislation altogether.

Now, thanks to the heroic efforts of two dogged senators -- Democrat John Kerry and Republican Lindsey Graham -- and the quiet support of the White House, there looks to be a 50-50 chance the Senate will pass a simpler and more moderate version of a bill this year that would begin to substantially reduce carbon emissions in the United States.

Many in the environmental community have come around to Kerry's view that this is the best shot they are going to have anytime soon at passing comprehensive energy and climate change legislation. And parts of the business community have come around to Graham's view that they can't afford another decade of uncertainty over regulatory issues, particularly with an activist Democrat in control of the regulatory agencies, just as they cannot afford to alienate an entire generation that has a keen interest in the environment and doesn't look kindly on their intransigence.

At this point, it's a bit of a stretch to call this a bipartisan compromise -- the bill that Kerry, Graham and independent Joe Lieberman are expected to introduce a week from Monday is likely to have no other Republican as an initial co-sponsor. But its terms have been crafted to appeal to a handful of Republican senators who, either out of personal belief or political necessity, are eager to find themselves on the right side of history.

They include: retiring senators such as George Voinovich of Ohio and Richard Lugar of Indiana, whose Midwestern states would fare even better under the Senate bill than the House-passed version; Judd Gregg of New Hampshire, who will surely like all of the goodies for the nuclear power industry included in the bill; Susan Collins of Maine, whose idea for rebating to consumers money collected by the government through the sale of carbon-emission rights to electric utilities and oil refiners is a central feature of the Senate compromise; and Scott Brown of Massachusetts, the newbie senator who so far has lived up to his promise to be an "independent" Republican.

Although the Senate bill retains the cap-and-trade structure of the House bill, it would apply, at least initially, only to electric power producers, with other manufacturers coming under the regime after 2016. The oil and gas industry would be handled under a separate regime that requires refiners to buy emissions permits for all the carbon contained in the gasoline or other fuels they sell -- in effect, a fee or tax on carbon. The amount of the fee would be determined by the price at which carbon emissions allowances are bought or sold by utilities on open exchanges. And while the fee would almost certainly be passed on to consumers in the form of higher fuel prices, most of it would be rebated through payroll and other tax credits. By paying more for energy and less for taxes, the idea is that Americans will use less energy and wind up with roughly the same amount of money to spend on everything else.

While there are still some details to be ironed about, there is a good chance that the bill will gain the support of oil giants BP, Shell and ConocoPhillips, along with major electric utilities and industrial corporations. There's even a chance the U.S. Chamber of Commerce and the American Petroleum Institute, heretofore implacable foes of climate legislation, will take a neutral stand on the Senate bill now that so many of their concerns have been addressed and so many of their members find the measure acceptable.

Most major environmental groups, meanwhile, got a pep talk Thursday at the White House from Chief of Staff Rahm Emanuel and other administration officials. Many of them have misgivings about nuclear power and increased oil and gas drilling, and they are particularly grumpy about provisions that would preempt stricter state environmental standards or curb the powers of some federal regulators. There is also disappointment that the Senate bill offers fewer subsidies for wind, solar and other renewable energy sources. In the end, however, most environmentalists will support the Kerry-Graham compromise.

As with health care and financial regulation, these accommodations should put the lie to the idea that the White House and Democratic leaders are embarked on radical crusades and unwilling to engage in bipartisan negotiation and compromise. And the truth is that, through this process, they have come up with a better bill as a result. In the end, if Congress is unable to do something about global warming, it won't be because of the opposition of "special interests," but rather because of ideological zealots and Republican partisans who are determined to deny Democrats another victory, even at the cost of a planetary environmental disaster.

EPA Proposes First-Time GHG Reporting By Cogeneration Facilities (*Inside EPA*)

4/16/2010
EPA is proposing to require combined heat and power (CHP) generation units, also known as cogeneration, to report for the first time their greenhouse gas (GHG) emissions to the agency, which EPA says could provide important data in crafting future GHG mitigation strategies.

The proposal to expand GHG reporting to include cogenerators comes as the agency is considering including other industry sectors under its GHG registry, and as the Obama administration is pushing energy efficiency projects, which could include cogens, as an effective climate change mitigation option.

In an April 12 *Federal Register* notice, EPA proposes to require that facilities subject to the agency's mandatory GHG registry indicate by checking a box whether some or all of the GHG emissions they report are from cogeneration units at their facilities. The notice defines cogeneration as a unit that produces electric energy and "useful" thermal energy, through the sequential or simultaneous use of the original fuel energy. *The notice is available on InsideEPA.com.*

Such information is not currently collected by EPA and only limited data are available from other federal and state programs, according to the notice. Data on the types and characteristics of facilities that use cogeneration and the performance of such units could be important to the future development of GHG mitigation strategies, EPA says.

George Pavlou, former EPA Region II acting administrator, said in October that agency climate regulations will be crafted to aid cogeneration, a move that industry sources said at the time should lead the agency to consider the technology as best available control technology for reducing carbon dioxide (CO2) emissions. Pavlou at an Oct. 1 meeting of the agency's Combined Heat & Power Partnership praised the potential for CHP to cut GHGs and said that, "Given this potential, EPA is working to ensure that any future climate change regulations are CHP-friendly."

The voluntary CHP partnership, established in 2001, is designed to promote cost-effective CHP projects in the United States. CHP requires that partners in the voluntary effort complete a letter of intent that states they will provide data on existing cogeneration projects and new project development to "help EPA determine climate benefits," but because the program is voluntary it is not a comprehensive source for such data, according to the agency's notice.

EPA also "recognizes that the information required under this proposal may not, by itself, be sufficient to determine" the actual quantity of GHG emissions occurring from cogeneration units at individual reporting facilities, companies or North American Industry Classification System (NAICS) sectors, according to the agency's notice.

EPA says the burden of reporting cogeneration data should be minimal because companies that have to report their GHG emissions are already required to submit annual reports and "should readily know (or could quickly determine)" whether they have cogeneration units at their facilities.

The April 12 notice also proposes to require facilities to include the name of their corporate parent and NAICS code in their GHG reports. NAICS codes classify businesses to help agencies collect and analyze data on the U.S. economy, according to the U.S. Census Bureau Web site.

EPA also published in the April 12 *Federal Register* three previously announced proposed rules to expand the scope of its GHG reporting registry to include emissions data from industries that emit fluorinated gases, the oil and natural gas sector, and underground CO2 injection and storage.

EPA Administrator Lisa Jackson signed the proposals last month. According to the federal governments' Unified Agenda of regulations, EPA intends to issue by September the final versions of the rules.

Activists Fear Climate Bill May Weaken EPA's Offshore Permit Authority (*Inside EPA*)

4/16/2010
Environmentalists are expressing concern about the possible inclusion of language in a forthcoming Senate climate bill that would shift EPA's permitting authority for offshore energy platforms to the Department of the Interior, saying the move could erode already scant regulations on platforms as the administration appears poised to open up previously protected offshore areas to oil and gas drilling.

The concern stems from efforts by the senators drafting the climate bill to seek industry support for the plan by including provisions that would open up wide swaths of the nation's coastal areas to energy extraction, an effort that some environmentalists say has not included them.

The most prominent offshore drilling proposal in the Senate is a draft plan unveiled last month by Sen. Lisa Murkowski (R-AK) that would shift EPA's authority to issue water, air and hazardous substance permits from EPA to the DOI's Minerals Management Service, which activists say would erode the already lax permitting requirements for offshore platforms. *The document is available on InsideEPA.com.*

Activists say the provision is part of what they say is a "wish list" of giveaways to the petroleum industry in the Murkowski language, portions of which are being "cherry picked" for inclusion into the forthcoming climate bill being crafted by Sens. John Kerry

(D-MA), Joseph Lieberman (I-CT) and Lindsey Graham (R-SC) and that is slated for possible introduction on April 22, which is Earth Day.

"They've been primarily meeting with the Chamber of Commerce and oil companies," one environmental source says. "It's more about currying favor with industry" rather than the environmental community.

The source says that, though details on what may be included in the Kerry-Graham-Lieberman bill remain scarce, the indications are that it will include provisions that go even further than an Obama administration initiative to open up coastal areas to drilling, which included the East Coast from New Jersey to Florida.

The source fears the upcoming climate bill may also include provisions that would limit required procedures under the National Environmental Policy Act (NEPA), which include conducting Environmental Impact Statements on federal projects. NEPA reviews have long been eyed as an obstacle to offshore drilling and have been a source of litigation for federal agencies when they fail to properly assess the environmental impacts of their actions.

"If anything has become apparent in a review of the Murkowski language, from which [Kerry, Graham and Lieberman] have been cherry-picking their own draft language, efforts are afoot to weaken existing environmental safeguards, not strengthen them, including waiving NEPA for certain activities and things along that line," the source said in an e-mail. "Whether or not these weakening provisions wind up being incorporated into the . . . draft will have to await Earth Day [April 22] when the bill is, ironically, unveiled."

Industry Urges Dot To Fight EPA Truck GHG Authority In Climate Bill (*Inside EPA*)

4/16/2010
Commercial trucking officials are urging the Department of Transportation (DOT) to oppose language in pending climate legislation that would give EPA primary authority to set greenhouse gas (GHG) limits for heavy-duty vehicles and engines, saying it would make "meaningless" DOT's nascent trucking fuel economy program.

The provision -- included in the House-passed climate bill and similar legislation offered by Sens. John Kerry (D-MA) and Barbara Boxer (D-CA) -- requires EPA to issue GHG rules for heavy-duty vehicles or engines reflecting the greatest degree of emissions reduction achievable, weighing cost, energy and safety factors. The rules would supersede language in the 2007 energy law that gave DOT authority for regulating heavy duty vehicles.

EPA's air office in its draft National Program Manager guidance for fiscal year 2011 says it is currently developing "potential" GHG standards for heavy-duty vehicles, but

does not elaborate. It is unclear the extent to which the agency's efforts would mirror the requirements in the climate legislation, though an appendix to the draft guidance says the proposal -- due in 2010 -- will apply to heavy-duty trucks and buses.

Truckers fear that EPA will not be as responsive as DOT to their concerns over the costs of imposing GHG limits on heavy-duty vehicles and engines, and that EPA rules would increase the price of new trucks.

The American Truck Dealers and the Owner-Operator Independent Drivers Association also warn that, "By establishing a new EPA program . . . DOT's truck fuel economy program, which Congress established less than three years ago on a bipartisan basis, would be rendered meaningless," according to an April 9 letter they sent to Transportation Secretary Ray LaHood. *The letter is available on InsideEPA.com.*

Obama's chief of staff huddles with enviro leaders (*Greenwire*)

Darren Samuelsohn, E&E reporter
04/15/2010
President Obama's chief of staff summoned environmental leaders and other key administration allies to the White House today to discuss energy and climate legislation expected to be released in the Senate on Tuesday.

Rahm Emanuel met for about 30 minutes with a group that included League of Conservation Voters President Gene Karpinski, Sierra Club Chairman Carl Pope, Center for American Progress President John Podesta, Environmental Defense Fund President Fred Krupp, Natural Resources Defense Council President Frances Beinecke, National Wildlife Federation President Larry Schweiger and Sheila O'Connell of Unity '09, a Democratic umbrella group.

The environmental groups are hopeful Obama will keep pushing Congress during this election year to pass comprehensive energy and climate legislation amid several of his other top domestic agenda items, including Wall Street regulatory reform and a nominee to replace retiring Supreme Court Justice John Paul Stevens.

Speaking last week in Washington, Larry Summers, Obama's top economic adviser, signaled the issues remain atop the administration's agenda (*Greenwire*, April 12). "There's no question that going forward for the rest of this year, a bipartisan energy solution is an absolutely critical priority for the president," he said.

Details on today's West Wing meeting remain unclear. A White House spokesman referred calls to Emanuel's office, which did not return requests for comment. Several of the environmental officials declined to comment as they left the White House.

On Capitol Hill, a Senate aide said Sens. John Kerry (D-Mass.), Lindsey Graham (R-S.C.) and Joe Lieberman (I-Conn.) have settled on Tuesday as their date for release of the climate and energy package they have been crafting for about six months. The proposal is expected to set a series of greenhouse gas emission limits for different sectors of the economy, with an overall goal of reducing U.S. emissions 17 percent below 2005 levels by 2020. It also likely will expand domestic production of oil, gas and nuclear power.

The senators and their staff have had another packed week of meetings, including closed-door talks with Interior Secretary Ken Salazar; White House energy and climate adviser Carol Browner; Reps. Henry Waxman (D-Calif.) and Ed Markey (D-Mass.); officials from Shell Oil Co., BP America and ConocoPhillips; Texas oilman T. Boone Pickens; and members of the National Association of Manufacturers.

Also today, at least eight Democratic senators with heavy industry in their states will release a letter detailing what they expect to see in the energy and climate proposal, including a border adjustment fee to limit imports from developing countries that do not have their own strict environmental requirements.

"It's just clearly laying out all the manufacturing and high-energy user issues," said Sen. Debbie Stabenow (D-Mich.), a lead organizer on the letter with Sen. Sherrod Brown (D-Ohio). Others signing onto the letter include Sens. Arlen Specter (D-Pa.), Carl Levin (D-Mich.), Evan Bayh (D-Ind.), Mark Warner (D-Va.), Robert Casey (D-Pa.) and Claire McCaskill (D-Mo.).

EARTH DAY

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Earth Day will be celebrated with a week's worth of activities in the Washington area (*Washington Post*)

By Jessica McFadden
Washington Post Staff Writer
Friday, April 16, 2010; WE21

I asked my son Charlie what he knew about Earth Day and he replied: "It's the day when the Earth gets cleaned up -- kind of like the day when the recycling truck comes to your house, except for the whole planet. All the people help, even those that normally don't think about that kind of stuff."

Pretty astute for 6 years old (of course, as his mother, I'm biased).

And according to Kathleen Rogers, president of the Earth Day Network, which works to promote Earth Day worldwide, he's not too far off the mark. "I can't imagine what the world would be like without Earth Day -- around this one day we get so much done!"

This year Earth Day turns 40. It has grown from the first national event in 1970, when about 20 million Americans participated in environmental rallies, mainly on college campuses, and sparked the modern green movement. Today, Earth Day is featured in standard calendar printings (official date: April 22), and more than 1 billion people in 190 countries will attend the Earth Day 2010 events unfolding over the next week.

A week-long celebration of Earth Day starts Saturday on the Mall and continues through the April 25 Climate Rally. Whether you would like to celebrate the planet by planting flowers on the Mall with your children, taking in a free concert or listening to speeches on climate policy from elected leaders, Washington area residents have a wealth of opportunities.

Earth Day events on the Mall April 17-25

Clean Up of the Mall Saturday 10:30 a.m. National Park Service and the Trust for the Mall staff will lead adult and child volunteers in a massive cleanup of the Mall and the Potomac riverbank. All materials will be provided, and there will be T-shirts and hacky sacks for kids. *Free.*

FDR Memorial, 1850 W. Basin Dr. SW.

Earth Day Tour at the Smithsonian American Art Museum Saturday 11:30 a.m. to 3 p.m. Family friendly activities include making woven placemats, interactive storytelling and even making a community fence in conjunction with the Running Fence exhibition. *Free.*

Kogod Courtyard, Smithsonian American Art Museum, Eighth and F streets NW. 202-633-5435, http://www.americanart.si.edu/reynolds_center.

Arts performances Saturday and Sunday, 11 a.m. to 6 p.m., 40th Anniversary Stage on the Mall at 12th Street. Live music, performance arts and speakers from community leaders and environmental stewards. Saturday performances include a multimedia presentation by NASA and renowned author of science books for children Seymour Simon. On Sunday there will be performances by Ray Apollo, Magpie and the Joy of Motion Dance Center youth company, among others. *Free.*

40th Anniversary Stage, on the Mall at 12th Street.

EPA@40 Celebration April 24 10 a.m. to 6 p.m., April 25 10 a.m. to 5 p.m. The Environmental Protection Agency offers activities for families, including an interactive kids booth about environmental hazards, backyard composting demonstrations, a Chesapeake Bay water model and mascots teaching kids about recycling and protecting nature. *Free.*

Between Fourth and Seventh streets on the Mall.

The Climate Rally April 25 11 a.m. to 7 p.m. The 40th anniversary celebration concludes with a star-studded concert with scheduled performers including Sting, John Legend, the Roots, Bob Weir and Patrick Stump. There will also be speeches by author Margaret Atwood and director James Cameron.

On the Mall.

Other Earth Day activities this week and next

Brookside Gardens Sunday 8 a.m. to 4 p.m. Activities include a morning bird walk, tree plantings and story times. *Free.*

1800 Glenallan Ave.,

Wheaton. 301-962-1400, http://www.montgomeryparks.org/brookside.

Anacostia Watershed Society Earth Day Clean Up and Celebration April 24 8:30 a.m. to 2 p.m. Clean up the shores of the Anacostia River. Picnic lunch, music and rally after at Anacostia Park, 1900 Anacostia Dr. SE. *Free.*

To see the locations and register, go to http://www.anacostiaws.org. *301-699-6204.*

Earth Day Cleanup at the National Zoo April 24 8 to 10 a.m., National Zoo staff and volunteers will be picking up aluminum cans, food wrappers and other litter in a wooded area of the Zoo near the Connecticut Avenue entrance. *Free.*

Parking Lot A, 3001 Connecticut Ave. NW. 202-633-4800, http://nationalzoo.si.edu/ActivitiesAndEvents/Celebrations/EarthDay.

Alexandria Earth Day April 24 10 a.m. to 2 p.m., Live music, green workshop and puppet shows. *Free.*

4800 Brenman Park Dr., Alexandria. 703-746-5420, http://www.alexearthday.org.

Fairfax County Earth Day Arbor Day Celebration April 24 11 a.m. to 4 p.m., Petting zoo, balloon artist, games and more activities for children, environmental education exhibitors for adults. *Free.*

Northern Virginia Community College Annandale Campus, C1 Parking Lot and the Upper CG Plaza, 8333 Little River Tpk., Annandale. 703-324-5471, http://www.nvcc.edu.

Earth Day at the Maryland Science Center April 24 noon to 4 p.m. Crafts, science experiments, music and storytelling. Free, with museum admission.

601 Light St., Baltimore. 410-685-5225, http://www.marylandsciencecenter.org.

EarthDay@Loudoun Family Festival April 25 11 a.m. to 4 p.m. Exhibits, education, entertainment. *Free.*

Clyde's Willow Creek Farm, 42920 Broadlands Blvd., Broadlands.
http://www.earthdayatloudoun.org.

ENERGY

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Apr 15, 2010

U.S. announces tighter scrutiny for Energy Star products (*USA Today*)

10:04 AM

The U.S. government, criticized for lax scrutiny of Energy Star products, has announced it will further tighten its certification rules.

Prior to using the Energy Star label, the U.S. stamp of approval for energy efficiency, companies will now have to submit complete lab reports and results about their products to the Environmental Protection Agency, according to the announcement Wednesday. EPA will no longer rely on an automated approval process.

Also, by the end of this year, all manufacturers will have to use accredited labs for product testing, which is currently required for some but not all Energy Star products.

The changes, meant to bolster others announced a month ago, come amid mounting criticism that the 18-year-old Energy Star program doesn't do enough to ensure its products meet its own efficiency criteria.

Energy Star approved 15 bogus products, including a gas-powered alarm clock and an air purifier that looked like a space heater with a feather duster on top, according to a report last month by the General Accounting Office, the investigative arm of Congress.

"The steps we are taking to strengthen the program will ensure that Energy Star continues to be the hallmark for energy efficiency in the years to come," says Cathy Zoi, an assistant secretary at the Department of Energy, which co-runs the program with the EPA.

DOE conducts off-the-shelf testing for some of the most common household appliances, and it says a recent audit by its inspector general found that 98% of these products met Energy Star requirements.

Energy Star has given its stamp of approval to more than 40,000 products since its inception in 1992. In 2009 alone, it says these products saved enough energy to lower utility bills by $17 billion and avoid greenhouse gas emissions equivalent to those of 30 million cars.

Rules tightened for Energy Star label (*Associated Press*)

Story also appeared: *Boston Globe*

WASHINGTON - The Obama administration is taking steps to strengthen the federal Energy Star program after a report found the government energy-efficiency program vulnerable to fraud and abuse.

The **Environmental Protection Agency** said new applicants will be required to submit complete lab reports and results in order to qualify products for the energy-efficient label. The agency will also ditch an automated approval process.

A report last month by the Government Accountability Office faulted the program for not verifying claims made by manufacturers.

The GAO was able to get a bunch of phony products certified, including a gasoline-powered alarm clock.

The **EPA** and Energy Department will also require all manufacturers by the end of the year to submit test results from an approved, accredited lab.

Contamination suspends Cabot's Pa. gas drilling (*Associated Press*)

By MICHAEL RUBINKAM (AP) – 12 hours ago

ALLENTOWN, Pa. — Pennsylvania environmental regulators on Thursday banned an energy company from drilling in the state until it plugs three natural gas wells believed to have contaminated the drinking water supplies of 14 homes.

The Department of Environmental Protection said Houston-based Cabot Oil & Gas Corp. has failed to abide by the terms of a November 2009 agreement to clean up the contamination in Dimock Township in northeastern Pennsylvania's Susquehanna

County, where residents say their wells have been polluted by methane gas and other contaminants.

DEP said Cabot has already paid a $240,000 fine and must pay $30,000 per month beginning in May until the company meets its obligations.

"We're very upset with Cabot," state Environmental Secretary John Hanger told The Associated Press. "The conduct, whether it's willful or unintentional, is completely unacceptable."

Cabot spokesman Ken Komoroski denied the company has neglected its obligations in Dimock.

"Cabot did comply with everything it could comply with under the November consent order," he said.

The company denies it polluted residents' wells, saying the high levels of methane detected in them might be natural.

Because of the region's complicated geology, it might be years before experts can say with any certainty what is causing methane levels to spike, Komoroski said.

"It just isn't scientifically fair to say in any short period of time that Cabot's activities did or did not cause the methane in the groundwater," he said.

Residents have described an ordeal that began shortly after Cabot started drilling near their homes, saying the water that came out of their faucets suddenly became cloudy and discolored, and smelled and tasted foul. A resident's well exploded on New Year's Day 2009, prompting a state investigation that found Cabot had allowed combustible gas to escape into the region's groundwater supplies.

More than a dozen families have filed a federal lawsuit against Cabot, asking for an environmental cleanup, medical monitoring and damages in excess of $75,000 each.

Cabot is among a slew of exploration companies that are drilling in the Marcellus shale, a deep layer of rock that experts say holds vast stores of largely untapped natural gas. The company began approaching homeowners in Dimock in 2006 and has drilled dozens of wells within a 9-square-mile tract of land in the township.

Pennsylvania regulators have repeatedly penalized the company.

Last September, the DEP temporarily banned Cabot from using a drilling technique called hydraulic fracturing, or "fracking," following three chemical spills at a single well site in Dimock.

Then, in November, the agency signed a consent decree with Cabot in which the company agreed to pay a $120,000 fine, take steps to improve its drilling operations, and restore or replace the affected water supplies in Dimock.

But the DEP said the company failed to meet a March 31 deadline to fix defective casings on three wells, and that gas continues to pollute groundwater. Regulators said they recently identified five additional defective gas wells drilled by the company and might require the company to plug them, too, unless it fixes them.

"Cabot had every opportunity to correct these violations, but failed to do so. Instead, it chose to ignore its responsibility to safeguard the citizens of this community and to protect the natural resources there," Hanger said in a statement.

Hanger said regulators will suspend their review of Cabot's pending drilling applications statewide until it complies fully with the agreement.

Cabot said it does not expect the DEP order to affect the number of wells it will ultimately drill in Pennsylvania in 2010, nor will it affect gas production.

Requirements tighten for Energy Star (*Washington Times*)

The Obama administration is taking steps to strengthen the federal Energy Star program after a report found the government energy efficiency program vulnerable to fraud and abuse.

The Environmental Protection Agency says that to qualify their products for the energy-efficient label, new applicants will be required to submit complete lab reports and results for review. The agency is also ditching an automated approval process.

A report by last month by the General Accountability Office faulted the program for not verifying claims made by manufacturers. The GAO was able to get a bunch of phony products certified, including a gasoline-powered alarm clock.

The EPA and Energy Department will also require all manufacturers by the end of the year to submit test results from an approved, accredited lab.

Activists Cite GHGs In Bid For EPA To Intervene Over Tar Sands Pipeline (*Inside EPA*)

4/16/2010

Environmentalists will urge EPA to weigh in on the impact of a controversial proposed pipeline expected to transport greenhouse gas (GHG) intensive Canadian tar sands oil

into the United States, possibly asking the agency to call for a delay in the project if it agrees with activists' concerns that the project will boost overall GHG emissions.

Several environmental groups are crafting a letter to EPA, and possibly other agencies, to raise concerns over the State Department's draft environmental impact statement (EIS) released April 9 for the Keystone XL pipeline project. Transcanada applied for the pipeline project citing little-used presidential permits that the State Department issues under the president's executive authority for cross-border energy and other projects deemed to be in the national interest.

One environmentalist says, "We think EPA has a significant institutional interest in accurate accounting for GHG emissions" from the project. The source says the State Department gave "cursory" treatment of GHGs in the draft EIS, a review required by the National Environmental Policy Act (NEPA) that agencies must conduct for their projects.

According to an informed source, environmentalists will detail their concerns about the climate change implications of the project, which they fear will enable greater reliance on energy from tar sands, which have high lifecycle GHG impacts. As proposed, the project would transport crude oil generated from Canadian tar sands to Texas.

It is not clear whether EPA is able to, or even inclined, to take steps that would stop or delay the project, but environmental groups in any case have been trying to focus greater government attention on GHG emissions, including consideration of cumulative impacts that result from energy or other projects.

Groups including the Natural Resources Defense Council (NRDC), Sierra Club and Friends of the Earth have already been raising concerns about the pipeline project with Obama administration officials, sources say. Due to its international nature, the project requires a presidential permit from the State Department. That permit, in turn, requires a determination on whether a project is in the national interest before it can proceed.

An environmentalist says groups want EPA to weigh in on the national interest issue. However, activists have faced past hurdles in blocking similar pipelines. For example, a federal district court last September dismissed an NRDC attempt to block another pipeline, which environmentalists have argued would transport the world's dirtiest and most polluting energy source. The U.S. District Court for the District of Columbia said in a Sept. 29 ruling that the president's "authority to issue permits for cross-border pipelines is completely discretionary and is not subject to any statutory limitation, including NEPA's impact statement requirement" (*Inside EPA*, Oct. 16).

Release of the draft EIS comes weeks after the White House Council on Environmental Quality (CEQ) released for comment draft guidance on when federal agencies should assess GHG impacts of their projects for NEPA reviews.

One NRDC attorney in a recent blog post argued that the State Department should have waited for CEQ to issue its final guidance before the department issued its

environmental impact statement for a controversial proposed tar sands oil pipeline from Canada. The attorney also argues the Obama administration should put "on hold" all future environmental impact statements for projects with potentially high GHG emissions, until the White House issues the guidance.

Electronics Groups Urgently Seek End To EPA Energy Star Suspension (*Inside EPA*)

4/16/2010
The Consumer Electronics Association (CEA) has joined with major retailer organizations in urgently requesting that EPA reverse its decision to suspend online certification of Energy Star products while it addresses concerns about fraud and abuse of the program, a request that has also gone to the Energy Department (DOE) and the White House.

In an April 5 letter to EPA Administrator Lisa Jackson, and copied to Energy Secretary Steven Chu and White House climate czar Carol Browner, CEA -- representing more than 2,000 companies as diverse as Google, General Electric Appliances, and Wal-Mart -- and the retailers say the Energy Star certification suspension will place "onerous and unreasonable burdens and delays" on industry's energy efficient product lines. *Relevant documents are available on InsideEPA.com.*

The letter follows EPA's March 30 announcement to Energy Star stakeholders that it was suspending Energy Star's online product submittal (OPS) system as part of its response to a scathing March 26 Government Accountability Office (GAO) report that concluded Energy Star product certification was subject to "fraud and abuse."

EPA also announced a number of other changes to the product certification program April 14, in response to the GAO findings, including immediately requiring manufacturers to submit complete lab reports to EPA for review prior to using the Energy Star label, revoking the automated approval process that allowed GAO to win certification for bogus products including a gasoline-powered alarm clock.

This and other new mandates are in addition to changes to accelerate steps that EPA and DOE have instituted over the past several months to boost test requirements in response to criticism by GAO, the EPA Inspector General and others (*Inside EPA*, March 26).

The newest changes publicly announced this week were first addressed in an April 2 memo from EPA air chief Regina McCarthy and Assistant DOE Secretary Cathy Zoi to Jackson and Chu addressing the GAO's findings. "Unfortunately, a recently released GAO report has provided some compelling evidence that the measures we have in place to protect the value of the Energy Star label are simply insufficient," the memo

says. It adds a “rapid, 180-degree shift in the way manufacturers apply for, earn and keep the Energy Star label” is needed.

The memo ordered a temporary shutdown of the OPS system, noting it will only be reopened “after the product review process has been strengthened.”

However, the consumer electronics industry says the shutdown will result in “barring the introduction of the newest, most energy efficient products, while penalizing manufacturers who choose to promote the Energy Star program,” according to the letter sent by CEA, the Consumer Electronics Retailer Coalition and the Retail Industry Leaders Association.

The letter also underscores that the consumer electronics industry comprised 59 percent of the energy savings achieved by the Energy Star program for residential products in 2008, citing EPA’s most recent annual data. “Energy Star qualification for a new product is customarily received while the product is well into its manufacture and shipping cycle,” the letter states. “EPA’s sudden decision to halt all new product registrations could therefore require removal of Energy Star labels from products, packaging and instruction manuals. Such removal is virtually impossible once products have left their point of manufacture. Indeed, some products have the Energy Star label indelibly etched into the product’s bezel or casing.”

CEA argues that EPA should not have suspended its certification system as a result of the GAO’s findings on program fraud and abuses. “We believe that EPA’s actions are disproportionate to the potential concerns identified by the [GAO],” the industry letter says. Instead, CEA and the retailer groups offer recommendations for alternative ways EPA could have responded to the report, rather than an “absolute ban on new product registrations,” including awarding the label to products in the certification process, as well products still in production but not yet registered.

The industry groups also ask EPA to begin a dialogue with manufacturers and other partners on ways to ensure the integrity of Energy Star compliance “without causing undue disruption to commerce.”

ENVIRONMENTAL JUSTICE

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First-Time Human Rights Case Marks Legal Shift By Equity Advocates (*Inside EPA*)

4/16/2010

A historically black community in Louisiana has won a first-time hearing in international human rights court on their claims of environmental racism, marking a shift in strategy for environmental justice advocates who say they are pursuing human rights claims in lieu of civil rights complaints after years of failing to gain traction at EPA and other federal agencies for those complaints.

The human rights claims involve pollution from various chemical manufacturing facilities in Louisiana, and a legal win for the community group could force a crackdown by the U.S. government on emissions.

But the government counters that the community has not exhausted domestic procedures and remedies to address their claims, and also notes that the petitioners and others have in the past successfully challenged EPA rules and forced their revision to address concerns about air toxics and other environmental impacts.

The group Advocates for Environmental Human Rights (AEHR) on behalf of residents of Mossville, LA, first filed the petition with the Inter-American Commission on Human Rights of the Organization of American States (OAS) in 2005, and the commission agreed March 30 to hear the first environmental racism case against the United States over the strong objections of the U.S. government.

One AEHR source says a positive ruling could bolster efforts by other communities who say they suffer a disparate impact from polluting facilities to win environmental justice relief on human rights grounds rather than civil rights grounds.

"What we're really shooting for is moving beyond [civil rights] to another body of law . . . and that's human rights. We've got ratified treaties to protect the right to life and freedom from discrimination in environmental matters . . . but you don't see it incorporated into the current system of government," the source says.

A spokesman with the U.S. mission to the OAS referred calls to EPA, which did not respond to a request for comment.

The shift in legal strategy comes as EPA struggles to reform its Office of Civil Rights (OCR), including forming a plan to deal with a decades-long backlog of discrimination complaints filed under Title VI of the Civil Rights Act (*see related story*).

The OAS commission will consider the case June 30 and could ask the United States to impose measures to restore the rights of Mossville residents who say they suffer pollution-related health impacts from 14 nearby facilities.

However, the U.S. government claims the court lacks authority in the matter because the United States and other OAS member states never adopted rules allowing for such a measure. Instead, the government says those rules were adopted by the commission itself. Additionally, the government says the Mossville petition fails to establish a

violation of the American Declaration on the Rights and Duties of Man, required for the commission to grant a hearing. *Relevant documents are available on InsideEPA.com.*

"Petitioners' reference to and reliance upon decisions and opinions of the Inter-American Court as binding upon the United States are factually and legally incorrect as the United States is not subject to the jurisdiction of that body," the 2006 response says.

However, the filing notes that the United States "as a policy matter recognizes that there are important linkages between environmental protection and the employment of civil and political rights." But it warns that "bodies entrusted with the responsibility to promote the observance and defense of specific rights should not attempt to elevate political goals and objectives onto a legal plane, by equating ideals with legal obligations."

A lack of legal remedies has been the crux of the issue for civil rights complainants since the Supreme Court in 2001 set an extremely high bar in civil rights claims, ruling that petitioners had to prove intentional discrimination, effectively shutting down such cases under the rights law.

The government in its filing also says the petitioners did not exhaust domestic procedures and remedies to address their claims. "Petitioners also fail to acknowledge that they and others have successfully challenged environmental pollution regulations issued by [EPA], resulting in their revision," including rules to reduce air toxics emissions from polyvinyl chloride facilities (*Inside EPA*, Nov. 13). "Petitioners also fail to address at all the possibility of actions under the laws of the state of Louisiana, or possible tort actions against, as well as previous settlements with, companies whose industrial actions have allegedly directly caused petitioners' injuries."

AEHR in its 2008 amended petition to the commission criticized existing environmental laws and regulations for their failure to "recognize, much less remedy, the significant pollution burdens of numerous toxic chemicals released by the 14 different industrial facilities in Mossville."

The petition also faults EPA's Office of Environmental Justice's (OEJ's) efforts to substantively address disparate impact concerns. "Unfortunately, these efforts to date have merely identified a few environmental laws in the United States that simply require opportunity for public participation. . . . Although public participation is important, these laws do not prohibit, or otherwise establish a remedy for, the underlying problem: the environmental legal framework that requires the issuance of permits to numerous polluting facilities that release tons of toxic chemicals in close proximity to residential communities. Notwithstanding the fact that communities such as Mossville habitually present objections to the injustice of the pollution burdens they suffer, the EPA has no legal obligation to deny permits in order to prevent, or even to ameliorate harmful burdens."

The petition adds that EPA's OEJ has acknowledged flaws in the law and that, "EPA officials openly admit that denying a permit based on environmental justice grounds,

such as preventing increased disproportionate pollution burdens, is beyond the scope of their legal authority." Additionally, it notes that EPA has rejected recommendations to use its discretionary authority to fashion remedies for disproportionate pollution burdens, meaning, "that as a matter of law in the United States, there is no legally enforceable right to compel the EPA to exercise such authority."

The AEHR source says the government's opposition to the filing was not a surprise because procedural rejections are fairly routine in such legal matters, but calls it "troubling" that it did not provide "any indication . . . that the U.S. government supports achieving environmental justice."

The source adds that if the group wins a substantive ruling from the commission, it expects the government to abide by the findings, particularly because the United States has in a number of instances called on other OAS member countries to comply with recommendations of the commission and has called on the commission to investigate matters in other member nations.

The decision to take the case to the OAS body comes after AEHR has been calling on the government to take action in Mossville since 1996 that did not result in any substantial change. "We filed this petition because it is a matter of last resort. There is no place that folks in Mossville can go to find relief and this is similar for other communities."

The source adds that Mossville did not file a Title VI complaint with EPA's OCR because of the office's inaction in addressing such petitions.

AEHR has identified a list of actions it wants the government to take and is hopeful it will win relief through the OAS process. These actions include development and execution of an acceptable relocation plan for residents, providing health services, lowering pollution and looking for ways to fix the systemic flaws in environmental regulations to address disproportionately impacted areas. -- *Dawn Reeves*

FUEL

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To Boost Corn Ethanol, Industry Eyes Senate Legislative Fixes To EPA RFS (*Inside EPA*)

4/16/2010
The ethanol industry is seeking language in possible Senate climate or energy legislation to boost corn ethanol by amending EPA's renewable fuel standard (RFS) to allow the fuel to win credit as an advanced biofuel and temporarily bar EPA from considering the climate impact of international land use changes in setting the RFS.

Growth Energy argues that the two changes could work together to aid the industry. If international land use change is not a factor in the lifecycle greenhouse gas (GHG) assessment of biofuels, some types of corn ethanol could exceed the advanced biofuels' mandate to reduce GHGs by 50 percent compared to gasoline, the group says. The group also has a Clean Air Act request with EPA to lift the bar on ethanol in gasoline above 10 percent (E10) to E15.

EPA's final RFS issued March 26 does consider international land use change in determining which fuels qualify for credit under the standard. The 2007 energy law currently bars corn ethanol from being considered an advanced biofuel.

"We're trying to get our message out there for whatever debate ensues in Congress," Tom Buis, the CEO of Growth Energy said at an April 12 press conference in Washington. The press conference was primarily to unveil a six month, $2.5 million national television ad campaign touting the benefits or corn ethanol -- the first such campaign by the industry. The ads are intended in part to support the industry's efforts in Congress, including the RFS measures and efforts to extend a blender's tax credit for ethanol and a tariff for imported sugarcane ethanol.

As part of a broader push to promote corn ethanol, Growth Energy is seeking legislative language in possible upcoming climate or energy legislation that would change key elements of the RFS, which was created by the 2007 energy law. First, the group is seeking a measure that would that would bar EPA from considering the international land use impacts of biofuels under the RFS for five years, pending the results of further study on the issue.

The language would be similar to a provision offered by House Agriculture Committee Chairman Collin Peterson (D-MN) and included in cap-and-trade legislation that passed the House last year.

Second, the group is seeking a measure that would strike language in the 2007 energy law that barred corn ethanol from qualifying under the advanced biofuel category of the RFS. The advanced biofuel classification is sought-after because it comprises a large portion of the standard -- 21 billion of the 36 billion gallons that will be required in 2022 -- which would vastly expand the possible market for selling corn ethanol under the RFS.

Advanced biofuels must reduce GHGs by 50 percent compared to gasoline, rather than the 20 percent reduction required for corn ethanol. But Buis said corn ethanol produced in natural gas powered plants would qualify as an advanced biofuel because it reduces GHG emissions by 59 percent if international land use change is not considered.

HAZARDOUS WASTES

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Dept. of Energy delays closing Yucca Mountain repository (*Waste & Recycling News*)

April 15 -- The federal Department of Energy has announced it will delay closing Yucca Mountain while lawsuits surrounding the decision to abandon the nuclear waste repository are litigated.

"We are confident that we have the legal authority to withdraw the application for the Yucca Mountain repository. However, the parties need some time to prepare and the Court needs time to consider the issues," said Department of Energy Press Secretary Stephanie Mueller. "We are proposing to halt temporarily any actions to shut down Yucca Mountain simply to provide that time. As the Secretary [Steven Chu] has said consistently, Yucca Mountain is not an option and he looks forward to receiving the recommendations of the Blue Ribbon Commission for the long term management of our spent nuclear fuel and nuclear waste."

The federal government was sued by the National Association of Regulatory Utility Commissioners, who are seeking to suspend payments into the fund the utilities said they believe were intended to support the Yucca Mountain site.

Contact Waste & Recycling News reporter Amanda Smith-Teutsch at 330-865-6166 or asmith-teutsch@crain.com

EPA Draft Dioxin Cleanup Goals Under Fire By Industry, Environmentalists (*Inside EPA*)

4/16/2010
EPA's draft interim cleanup goals for dioxin are being blasted by environmentalists as inadequate to protect public health, while industry groups and the Department of Defense (DOD) are questioning the scientific basis of the goals and are urging the agency to put off the interim cleanup goals until the agency completes its reassessment of the most toxic form of dioxin -- 2,3,7,8-Tetrachlorodibenzo-p-Dioxin (TCDD).

Industry groups are also raising concerns the new cleanup guidelines could prompt a reexamination of numerous dioxin contaminated sites that have already been remediated.

These concerns are outlined in recent public comments that offer competing views on how EPA should revise its draft dioxin PRGs, which set the basis for cleanup decisions at Superfund sites across the country. The interim dioxin PRGs are expected to be issued as final by June, and will be used at cleanups until new PRGs based on the agency's reassessment of TCDD is completed. Under EPA Administrator Lisa

Jackson's May 2009 research plan for dioxins, the agency is expected to release its final reassessment of TCDD in December 2010.

The U.S. Chamber of Commerce in its comments calls for EPA to perform an economic cost-benefit analysis on the impacts that could be anticipated from the proposed interim PRGs -- a call echoed by U.S. Magnesium and the pharmaceutical company Hoffman-La Roche in their separate comments. Though EPA has proposed a widely varying range of four numbers, based on cancer and non-cancer endpoints for residential and non-residential sites, all the proposed new PRGs are significantly tighter than the existing 1998 federal remediation standards of 1,000 parts per trillion (ppt) for residential soil and 20,000 ppt for commercial soil.

EPA's proposed cancer-based PRGs are 3.7 ppt for residential sites and 17 ppt for commercial or industrial sites -- lower than the numbers EPA has proposed using, 17 ppt for residential sites and 950 ppt for commercial or industrial sites, which are based on non-cancer health effects.

The Chamber notes that changing the PRGs raises the possibility of re-opening "potentially hundreds" of sites that were cleaned up to earlier standards -- and raising the specter of significant additional costs for industry. "By effectively changing the standards for dioxin in soil at residential and commercial/industrial sites through its interim PRGs, EPA risks the very real problem of 'reopening' many sites that were previously closed under [Superfund law]," according to the Chamber's April 2 comments. "Such an occurrence would impose enormous burdens on states, and many communities will find it exceedingly difficult to redevelop previously closed properties because EPA's actions will introduce the specter of regulatory uncertainty."

U.S. Magnesium, a Salt Lake City-based magnesium manufacturer and recycler, argues the agency "has ignored relevant government policies and failed to evaluate or even consider relevant economic evidence and relative costs and benefits of the Draft PRG," according to its March 31 comments. "In fact, the draft PRG threatens to add millions of dollars in cleanup costs with no incremental health benefits. This disregard of costs and benefits is further evidence of the arbitrary and capricious character of the draft PRG."

The Chamber also incorporated the Pentagon's comments into its own discussion of concerns that EPA's draft PRGs are outdated, and ignore the most recent science on dioxin. Because the draft PRGs are not based on the new TCDD assessment, they "cannot be based on the best science," and as a result, the Chamber considers their release "both premature and ill-advised." *Relevant documents are available on InsideEPA.com.*

DOD's comments argue that EPA's proposed cancer-based PRGs would be below background levels of dioxin currently existing in many soils, which the agency estimated in 2007 as ranging between 0.2 and 11.4 ppt -- and as such "should not" be finalized. "If implemented, additional costs to conduct detailed comparisons to background in order to determine if the dioxins and furans are site-related would be incurred with little if any

benefit to the public," according to DOD's December 2009 comments, which EPA released last month. DOD also argues the cleanup levels in the PRGs are based on outdated science and that EPA should wait to create new PRGs until it completes its reassessment of TCDD.

Environmentalists, however, are urging EPA to tighten the interim PRGs to the cancer-based numbers, pointing out that dioxin is considered a potent carcinogen by multiple government agencies.

Industry, too, raises concerns about EPA's scientific approach to producing the proposed PRGs. DuPont, for example, argues that EPA has not incorporated the relatively recent concept of internal dose among its toxicology studies of dioxin. DuPont argues that this method, which measures the amount of dioxin in the blood of an exposed lab animal, is more accurate than measuring the amount of dioxin that a lab animal is dosed with during a study.

The view that EPA is relying on outdated science is also backed by the chemical industry association the American Chemistry Council's Chlorine Chemistry Division, which argues among other things that EPA has overstated the amount of dioxin to which people might be exposed from contaminated soil.

EPA Launching New FACA Group To Focus On Federal Facility Cleanups (*Inside EPA*)

4/16/2010
EPA is preparing to launch a new federal advisory committee to tackle cleanup and reuse issues at federal agencies' Superfund sites, similar to a Clinton-era panel that gave citizen groups a key role in working with federal agencies to address federal facility cleanup issues, following the urging of EPA waste chief Mathy Stanislaus, sources say.

EPA is working on setting up the advisory committee, which will be run under the Federal Advisory Committee Act (FACA), but does not yet have a charter for the group, an agency source says, adding that EPA has given other agencies the "heads up" on the committee through informal conversations.

EPA has described the new committee as "FFERDC re-visited," one military source says. FFERDC refers to the EPA-convened Federal Facilities Environmental Restoration Dialogue Committee, which operated from 1992 to 1996, setting a high standard for public participation in environmental decision-making, according to EPA's Web site.

FFERDC's final consensus policy recommendations included advising federal agencies to initiate more expansive and meaningful public involvement, use more advisory

boards, and adopt a variety of approaches to set priorities and deal with funding shortfalls related to cleanups. The recommendations also promoted partnerships between federal, state and local agencies, communities and others to improve cleanup decision-making at federal facilities.

The EPA source says there is no specific timeline at this point for the new group's formal start-up. The source would not provide details on issues the new committee may tackle.

But environmentalist and local government sources are applauding the move and are pointing to a number of key issues they believe are ripe for addressing in such a forum. For instance, one environmentalist source says the partnership approach between federal, state and local entities and other stakeholders that emerged in the 1990s has deteriorated. "There is a need once again to enshrine that approach in policy and develop the personal relationships to implement it," the source says in an e-mail response to questions.

In addition, during the previous dialogue period, little attention was given to the latter half of the cleanup process and what issues might arise there, according to the source. In the 1990s, "we were all focused on the first half of the cleanup process: investigation, remedial decisions, and putting remedies into place," the source says. "Little thought was put into long-term management, so disputes emerged" over regulatory authority after the signing of records of decision for cleanups, the source says. And the source says there is no model for deciding how the community should be involved after cleanup decisions have been made.

The source also says disputes are emerging over the nature of public participation at federal facility sites. One recent example of this relates to the former Badger Army Ammunition Plant in Wisconsin, where the Army has reportedly been heavy-handed in its treatment of a restoration advisory board (RAB), recently placing a gag order on community members who received a technical review critical of an Army cleanup proposal, and dismissing the RAB's technical consultant, according to an activist group.

In a recent posting on the Center for Public Environmental Oversight's (CPEO) military environmental newsgroup listserv, the group's director Lenny Siegel says disputes are emerging at Badger and other sites over the nature of oversight. When RABs, which now number about 300, were first formed in 1994, DOD hosted trainings for installation environmental personnel on the concept of public participation, but today that knowledge and training has been lost.

The environmentalist source says a dialogue committee could also address cleanup expectations for federal land management agencies such as the Interior and Agriculture departments that were never fully resolved in the original FFERDC. These two departments "own properties that were contaminated by private parties, and there is not clear policy for funding and regulating those sites," the source says.

An activist with Energy Communities Alliance, a coalition of local governments near Energy Department (DOE) sites, would like to see a reaffirmation of many of the issues addressed under the original FFERDC, for instance clarifying the roles of different parties in the cleanup and reuse process. “I don’t think these issues have been looked at since 1996,” when the final report was issued by FFERDC.

And a source with an Alaskan local government calls the re-start of a dialogue committee “a great idea,” but believes it should have a broader scope than just those facilities that are on EPA’s Superfund list -- the list of the nation’s most severely contaminated hazardous waste sites. For instance, this source believes an issue ripe for discussion relates to the transfer of property on formerly used defense sites to local and state governments, saying EPA should have a seat at the table. This source believes the FACA committee should address post-contamination issues -- cases where the military hands over property to another entity such as a local government, but additional contamination or unexploded ordnance left by the military is discovered years later, according to the source.

The military source says the military will support EPA on the FACA’s development. If the effort will focus on community outreach issues, the military would welcome additional insight or critiques although it believes that through its RABs and community action plans -- installation plans for working with communities on cleanups -- it has a good record on addressing community issues, with some exceptions, the source says. “But Mr. Stanislaus comes from a different point of view, and maybe he’ll point out things that we’re not doing,” the source says. -- *Suzanne Yohannan*

RECYCLING

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New program makes sure e-waste is recycled right (*USA TODAY*)

April 16, 2010 Friday
FINAL EDITION
MONEY; Pg. 1B
New program makes sure e-waste is recycled right;
Auditors will certify recyclers who don't export electronics
BY: Julie Schmit
More companies and recyclers are taking steps to ensure that old electronic devices such as TVs and computers aren't dumped in poor countries.

The Basel Action Network, a Seattle-based non-profit that largely exposed the overseas dumping of U.S. electronic waste, on Thursday launched a program to use third-party auditors to certify recyclers who don't export hazardous electronic waste.

The so-called eSteward recyclers will also agree not to dump the waste in U.S. landfills and agree to meet other criteria.

The certification is intended to provide companies and consumers with some assurance that the waste, which can include toxins such as lead and mercury, is disposed of safely.

The Government Accountability Office, in a 2008 report, declared that U.S. electronic waste was often disposed of unsafely in such countries as China and India. There, workers reclaim gold, silver and copper from the waste, often in open-air acid baths that leave a toxic sludge.

The Basel network also says it won assurances from 13 organizations, including Samsung, Bank of America, Wells Fargo, Capitol One Financial and the Natural Resources Defense Council, that they'll use eSteward recyclers whenever possible.

Wells Fargo had already been using recyclers who pledged not to export. The eSteward pledge led to changes for others, says Jim Puckett, Basel's executive director. The Natural Resources Defense Council, for one, had not adequately tracked its e-waste, says the council's senior scientist, Allen Hershkowitz.

So far, Basel has certified three recyclers and seven sites.

Before eStewards, even companies that wanted to avoid export of electronic waste had to "hope for the best," when they handed their waste to recyclers, says Robert Houghton, president of Ohio-based recycler Redemtech. It is an eSteward and counts major companies among its customers. Now, "They can get some proof," Houghton says.

Basel's standards compete with another set launched in January. It was crafted by industry and backed by the **Environmental Protection Agency.**

That standard, dubbed R-2, doesn't ban the export of hazardous electronic waste but requires that it be handled safely. Instead of a ban, the Institute of Scrap Recycling Industries says, efforts should be made to help poor countries develop safe recycling.

SOLID WASTES

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Air Force hoping trash will fuel flight to energy independence (*Greenwire*)

Dina Fine Maron, E&E reporter
04/15/2010
An Air Force base in the Florida Panhandle plans to start using its garbage as fuel this summer as part of a larger effort to wean military facilities from the electric grid.

Hurlburt Field will try technology that uses extreme heat to transform the base's daily 8.3 tons of trash into energy, a process that could also safely handle hazardous materials, said Ron Omley, who heads the environmental branch of the Air Force Special Operations Command and is overseeing the project.

But the system won't be powering the base just yet. The first goal of the test that begins in June is to show the effort can process all the Okaloosa County base's trash and generate enough power to sustain itself.

The system that will be tested at Hurlburt was developed by Pyrogenesis Canada Inc. and depends on traditional gasification and a high-temperature plasma arc to break down wastes.

With temperatures hitting 5,000 degrees Celsius, the device tears apart trash's molecular bonds to yield synthesis gas that can substitute for natural gas in electricity production or act as a building block for producing ethanol or methanol, the Montreal-based company says. The system also converts leftover inorganic trash into a stable glassy byproduct usable in construction.

Though the system will be hooked up to the grid, it is expected early on to provide enough power to be self-sufficient, the company says. It will draw electricity from the grid to kick-start its operations. Eventually, officials say, the system will supply power to other base operations.

While plasma gasification technology has been in the works for about 20 years, it has been slow to come to market, mostly because of its cost, said Gillian Holcroft, Pyrogenesis' operations director.

There are currently fewer than a dozen fully operational plasma gasification plants, said Kevin Willerton, vice president of strategic alliances and business development for Calgary-based Alter NRG Corp., an energy-technology developer.

Japan has two plants that break down municipal waste, and India has one that processes hazardous waste, Willerton said. Those plants use Westinghouse technology owned by his company, while a fourth plant in India is also in the works, he said. But, Willerton estimated there are fewer than five other plants worldwide.

Commercializing and perfecting the technology has been slow-going. Alter NRG has had a pilot plasma gasification project running to process wood chips in Madison, Pa., for two decades, Willerton said. But in the coming years, he said, the economics of waste processing may pave the way for more waste-to-energy projects.

The Hurlburt project will be a first for Pyrogenesis. The company has a prototype in Montreal, but that system does not process waste every day. The Air Force's Omley, who lobbied the Pentagon for permission to try the technology, said the base's system is capable of safely breaking down anything except high-level nuclear waste.

The base's device is designed to have five times the capacity of its earlier pilot so it can manage the average daily wastes from the base and another 3 tons of trash a day from nearby Eglin Air Force Base.

The Navy is also working with Pyrogenesis, Holcroft said, to develop a plasma gasification system for next generation nuclear aircraft carriers. Since 2003, Carnival Cruise Lines has been using an on-board Pyrogenesis system to handle trash from one of its cruise ships.

System could cut GHG emissions

Compared with other gasification systems, plasma is the best at processing a broad mix of trash, said James Childress, executive director of the Gasification Technologies Council. "Plasma arcs operate at a higher temperature and can take a wider range of feedstocks both in size and composition," he said.

Plasma systems also do not require labor to separate trash that might hamper other gasification devices, Holcroft said.

Omley says the Air Force surgeon general's office invested in the project and plans to eye the technology for disposing of sharp needles, blood and other medical waste.

Companies have experimented with the technology for processing hazardous waste, low-level radioactive waste and even medical waste for years, said Jeff Surma, a founder of Oregon-based InEnTec.

Presently, the technology is really "only suited for high-cost work -- processing hazardous, radioactive and medical waste," he said, because of the price of such technology. But demonstrating the device on a larger scale could change that, he added.

Omley, whose office is at Hurlburt, forecasts the Pyrogenesis system will yield savings of about $700,000 a year for the base -- including the avoided cost of having to truck garbage to the landfill 100 miles away and profits from selling the recycled solid materials.

"This is happening now because the economics of waste disposal have risen to the point that a business case can be made to pay back the cost of the equipment," Omley said.

An analysis by the Canadian government found that the Pyrogenesis plasma gasification system could reduce greenhouse gas emissions.

A study by Canada's National Research Council provided to *Greenwire* by Pyrogenesis says using plasma gasification could reduce greenhouse gas emissions by 91,000 tons a year at Hurlburt. Omley said the Canadian government is backing the Hurlburt

initiative with $800,000. Gulf Power, a Southern Co. subsidiary, also committed $100,000 to the venture, he said.

Worries about dioxins, furans

But plasma gasification has opponents.

One complaint is that the technology requires a significant amount of electricity to reach the high temperatures it needs to operate.

And the Global Alliance for Incinerator Alternatives (GAIA) maintains such systems are "incinerators in disguise" -- leading to the production of cancer-causing dioxins and furans just like traditional trash burners that leave behind toxic residue.

The alliance of more than 500 grassroots activist groups maintains that the plasma technology also has been "plagued with problems" and that one plant, operated by Allied Technology Group and designed to process low-level radioactive waste and hazardous waste stored at the Hanford Site in Richland, Wash., was forced to close due to "operational problems with the plasma arc equipment as well as financial problems."

InEnTec's Surma, whose company provided equipment for the Hanford project, refuted GAIA's charge that the site was forced to close because of technology issues. In fact, he said, the site "never fully opened," he said, noting that the operator, ATG, had financial problems from an unrelated investment and went bankrupt.

"I have never heard of any environmental problems with any of [plasma gasification] technology at all," Surma said.

Surma says the technology works and that InEnTec just set up a plant at a Dow Corning property in Midland, Mich., designed to exclusively process 18 tons of hazardous waste a day from a chemical facility.

Ananda Lee Tan, who coordinates the North American arm for GAIA, said the alliance favors recycling and composting instead of employing gasification technology. "A lot of our concerns really mirror our concerns with incinerators in general," he said.

But the Air Force's Omley said concerns about dioxins and furans are unwarranted with this system because it uses a patented gas-cleaning process to head off the formation of toxics. The system, he said, douses the synthesis gas with water, dropping temperatures to below 100 degrees Celsius in less than a second and preventing formation of dioxins, furans and other harmful complex molecules.

The system also operates in a closed-looped system and removes particulates, acid gases, sulfur and mercury, Omley said. It can "safely gasify pathogens and hazardous materials," he said.

SUPERFUND

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EPA approves treece relocation plan (*Pittsburgh Morning Sun*)

By BRETT DALTON
The Morning Sun
Posted Apr 16, 2010 @ 01:03 AM
TREECE —

The process of providing for the relocation of Treece residents took a major step forward on Thursday.

The U.S. Environmental Protection Agency has approved a modification of the cleanup plan for the Tar Creek Superfund site in Oklahoma, a plan that also provides for the relocation of Treece residents.

Treece, like neighboring Picher, Okla., — also part of the Tar Creek Superfund site — is polluted with waste left over from lead mining in the area. Picher residents began relocating from their town nearly two years ago. Last year, EPA officials visited Treece and determined that "residents there face a unique and urgent threat from the legacy of pollution" related to lead mining.

"Coping with this legacy of pollution has been an extraordinary challenge for this community," said Lisa Jackson, EPA Administrator. "It's important that they have the support of their government, and we're happy to be able to offer assistance as they relocate to a safer, healthier place."

Thursday's announcement marks the latest step in what has been an ongoing effort to help Treece resident relocate to a safer environment. In October, Congress provided EPA with an exemption from the Uniform Relocation Act, thereby allowing for the relocation of Treece residents. As a result, EPA identified relocation as the primary option for Treece residents due to similar environmental challenges to those faced by immediately adjacent Oklahoma residents.

In January, the EPA sent a letter to state officials regarding the potential relocation of Treece residents, in which it outlined the necessary steps to complete the process. Those steps included meeting the state's 10 percent share of relocation costs, developing a plan for implementing the buyouts and holding public meetings to inform residents about the process.

The EPA offered to help the state carry out these actions, and offered to make $300,000 available to help Kansas take these steps once a final determination is made.

The voluntary relocation assistance will be provided by the State of Kansas Department of Health and Environment. The estimated number of properties being considered is approximately 77 residential and business properties.

“We hope this marks the beginning of a new chapter of health and prosperity for the families of Treece,” Jackson said of the Superfund site agreement.

Wall company agrees to pay $20M for cleanup work (*Asbury Park Press*)

By TODD B. BATES ENVIRONMENTAL WRITER •
April 15, 2010

Wall Herald Corp. has agreed to pay about $20million for cleanup work at the long-polluted
Monitor Devices Superfund site in the industrial park section of Monmouth Executive Airport in Wall, federal officials announced today.

The site landed on the Superfund list of the nation's worst hazardous waste sites in 1986, and the U.S. Environmental Protection Agency will begin cleaning up groundwater there this spring, according to a statement by the EPA and U.S. Department of Justice.

The agencies announced a settlement filed today in federal court in Trenton.

Under the settlement, Wall Herald, which is privately held, will reimburse the EPA for its investigation of soil and ground water at the site and the development of the cleanup plan, the statement says. The settlement money will also cover the cost of completing the cleanup.

Groundwater at the Monitor Devices site is contaminated with hazardous chemicals, including
trichloroethylene, a solvent used to clean metal parts that can cause nervous system effects as well as liver and lung damage, according to the federal statement.

Wall Herald has owned the property since the early 1960s. From 1977 to 1980, Wall Herald leased part of the site to Monitor Devices Inc., which went bankrupt in 1988, the statement says.

Monitor Devices made and assembled circuit boards used by companies in the computer industry and circuit panels plated with copper, lead, nickel, gold and tin, according to the statement.

The manufacturing process produced wastewater that was discharged directly onto the

ground,
contaminating soil and ground water there, the statement says.

In 1986, the state Department of Environmental Protection began investigating the extent of
contamination at the site, which was subsequently added to the Superfund list, the statement says.

In the mid-1990s, the EPA became the lead agency investigating the contamination and later
determined that the groundwater required a cleanup, the statement says.

The agreement, or consent decree, lodged in the U.S. District Court for the District of New Jersey is subject to a 30-day public comment period and court approval.

A copy of the consent decree is available on the justice department Web site at www.justice.
gov/enrd/Consent_Decrees.html, according to the statement.

EPA developing plan to clean water contamination under Alhambra, San Gabriel Superfund site (*Pasadena Star News*)

Posted: 04/15/2010 12:34:20 PM PDT
Progress is finally being made on the federal effort to clean up cancer-causing contaminants in the San Gabriel Valley's last Superfund site.

EPA officials are meeting with Alhambra, Rosemead and San Gabriel residents to explain the extent of groundwater contamination under their cities as the agency begins planning how to clean it up.

"Now we have the data, so we can begin to consider ways to clean it up," EPA area project manager Lisa Hanusiak told residents at the Alhambra Library Wednesday.

The agency will spend the next year preparing several options to remove the contamination. Officials will then evaluate the “techniques, costs, and challenges” of each option and select a remedy by next year, Hanusiak explained.

When the actual cleanup will take place is another question.

"It's hard to predict when we will actually be cleaning it up," Hanusiak said.

In the meantime, residents are not being exposed to the contaminants, she added.

The area in question, which includes the cities of Alhambra, San Gabriel and parts of

Rosemead, Temple City, San Marino and South Pasadena, was declared a Superfund site in 1984. But it was not until a few months ago that EPA scientists completed their full investigation on the extent of contamination there.

That investigation revealed extremely high levels of tetrachloroethylene (PCE) and trichloroethylene (TCE) - up to 300 times the level allowed for drinking water. Those chemicals - used in degreasers, industrial solvents and dry cleaning solutions - are carcinogens.

Water companies constantly test the groundwater they draw from wells in the area. If contaminants are found, they shut the wells down, treat the water to remove the contaminants, or blend the water with clean water to reduce the concentration of contamination to allowable levels.

But the ultimate goal is to remove the contamination. To do that, the site must compete for cleanup funding with Superfund sites across the country. And the EPA is attempting to determine the companies responsible for the contamination, in order to get them to pay for part of the cleanup.

Several other areas in the San Gabriel Valley have also been declared Superfund sites because of groundwater contamination. Cleanup of those areas is more advanced than the area under Alhambra and San Gabriel, in part because they contained high levels of the chemical perchlorate, which has not been found in high concentrations in the latest area.

The EPA will hold a second meeting on its findings Saturday at the Rosemead Library, 8800 Valley Blvd., from 2 to 4:30 p.m.

Wide Range Of Industries Urge Limits To New Superfund Financial Rules (*Inside EPA*)

4/16/2010
A wide range of industry groups are urging EPA to change course on its plans to include them as targets for new rules the agency is developing to ensure companies have the financial resources to clean up their own pollution so that their facilities do not become Superfund sites in the future, arguing the rules would be redundant and possibly illegal.

EPA announced late in 2009 that it intends to develop the so-called financial assurance rules for the chemical, petroleum and coal industries along with electric power generators and hardrock mining companies. The announcement was largely in response to a lawsuit environmentalists filed in which the activists argue EPA is required to develop such rules under section 108(b) of the Superfund law and that the

absence of them has allowed companies to skirt cleanup responsibilities by declaring bankruptcy.

But petroleum and coal industry groups in joint April 6 comments argue that new financial assurance rules are not necessary for many of the industries EPA has selected because industry is already doing a good job managing its hazardous waste, and the groups suggest the agency's rationale for including them may be illegal. The comments on behalf of the American Petroleum Institute, the National Petrochemical and Refiners Association and the American Coke and Coal Chemicals Institute were written by Susan Bodine, who served as EPA's waste chief during the Bush administration and is now an attorney with Barnes & Thornburg.

Bodine argues EPA's methodology for determining which industries should be subject to Superfund financial assurance rules is flawed. For example, Bodine argues EPA based its decision to include the petroleum and coal products manufacturing industry based on data suggesting they generate 13 percent of the country's hazardous waste, 2 percent of hazardous releases reported to EPA's Toxic Release Inventory (TRI) and account for less than 2 percent of the sites appearing on the agency's National Priorities List (NPL) for Superfund.

Based on this information, "it would be more reasonable to draw exactly the opposite conclusion -- facilities in these industry sectors are properly managing hazardous substances, and thus present no potential burden on" EPA's Superfund budget, Bodine argues. She says the agency's "rationalization is arbitrary and capricious and cannot support agency rulemaking or withstand judicial review." *Relevant documents are available on InsideEPA.com.*

Bodine also argues EPA should not impose financial assurance rules under Superfund on industries that are already subject to financial assurance rules under other federal laws such as the Resource Conservation & Recovery Act (RCRA). Other laws, such as the Clean Air Act, the Clean Water Act and the Safe Drinking Water Act have also "wrought dramatic changes in business operations" in recent decades that have reduced the chances of pollution "and it would be arbitrary and capricious for EPA to ignore that fact by considering practices that no longer occur," Bodine argues. "In addition, EPA must consider the incentives for proper management created by the prospect of Superfund liability, possible tort liability, generally accepted accounting principals, and Securities and Exchange Commission (SEC) disclosure requirements."

And Bodine says EPA should also "consider the adverse economic impacts of tying up capital or operating credit in financial assurance mechanisms," demanding that EPA conduct an economy-wide analysis of the cost and benefits of such a rulemaking.

The chemical industry makes similar arguments in its own comments. "NPL sites referenced by EPA have generally resulted from historical operations and have little relevance to modern day chemical operations, the American Chemistry Council (ACC) says in April 7 comments. In addition, ACC argues its members' releases to air, water

and underground injection wells "are subject to permitting programs that establish limits on what may be released by the facility at a level that is protective of human health and the environment, and thereby are not an appropriate subject for" Superfund.

Similarly, the solid waste management industry argues in April 7 comments that EPA should narrow any new responsibilities "to those facilities that are not already covered by RCRA financial assurance requirements. "In addition, because [municipal solid waste] facilities (i.e., landfills, transfer stations, and recycling operations) no longer accept or manage hazardous waste, these facilities should not be required to acquire [Superfund] financial assurance," the National Solid Wastes Management Association says.

The electric power industry acknowledges in April 7 comments that it accounts for "some of the highest volumes of of on-site releases, totaling over 161 million pounds" or 7.5 percent of the total releases of Superfund hazardous substances reported to TRI. But although "these are TRI-reportable 'releases,' these 'releases' to air or land would not be subject to [Superfund] reporting or cleanup obligations and would presumably not be included within the risks to be covered by [a Superfund] financial responsibility program," the industry argues in the comments, which the Utility Solid Waste Activities Group (USWAG) filed on behalf of the Edison Electric Institute, the National Rural Electric Cooperative Association and the American Public Power Association.

The Nuclear Energy Institute (NEI) meanwhile requests in April 7 comments that EPA "explicitly exclude commercial nuclear power plants," along with nuclear fuel fabrication plants and uranium enrichment and conversion plants "from the larger group of facilities" covered by any new financial rules affecting the electric power and chemical manufacturing industries.

"Commercial nuclear power plants and other nuclear facilities regulated by the Nuclear Regulatory Commission (NRC) should not be included in EPA's future [Superfund] financial responsibility rulemaking because they are already subject to extensive decommissioning and financial assurance regulations promulgated and administered by the NRC," NEI says. "The EPA has long recognized the NRC's expertise in radiological site decommissioning, as illustrated by EPA's current policy of deferral to NRC decisions in this area."

If EPA does proceed with new rules, industry officials say they should be as flexible as possible and applicable to only facilities that generate significant volumes of hazardous substances.

Bodine notes that section 108(b) of the Superfund law lists insurance guarantees, surety bonds, letters of credit or qualifications as self-insurers among the types of mechanisms that could satisfy financial assurance requirements and claims the law is worded in such a way that EPA must make all of those options available.

“In fact, to preserve the confidentiality of the financial records of privately held companies, additional mechanisms should be considered,” Bodine says. “Without disclosing financials, privately held companies can demonstrate financial responsibility by the use of a ratings index/trigger, by employing the services of an agency approved, company-compensated financial analyst to certify the companies’ financial health under confidentiality agreement, or by providing a comfort letter from an approved audit firm to the effect that the company exceeds minimum defined/required financial thresholds.”

The electric power industry says that if EPA proceeds with new rules it should restrict their application “to only those facilities where hazardous substances are managed in significant volumes and eliminate from coverage electric power transmission and distribution sites as well as those sites managing fuels that do not yield significant volumes of [Superfund] hazardous substances,” according to the USWAG comments.

EPA should also not base new financial requirements on “worst case scenarios,” USWAG says. “EPA uses an example of an electric power industry site cleanup the recent Tennessee Valley Authority Kingston spill in which expected costs of cleanup range from $933 million to $1.2 billion,” USWAG notes. “While admittedly this is a recent and catastrophic release, EPA’s own assessments of the structural integrity of surface impoundments used to contain coal combustion residuals conducted in the wake of the TVA spill showed that no other electric power industry impoundment posed immediate safety threats.”

TOXICS

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Friday, Apr. 16, 2010

Regulation of Toxic Chemicals Faces Tightening (*Times Magazine*)

By Bryan Walsh

When Congress passed the Toxic Substances Control Act (TSCA) — the law designed to regulate potentially dangerous chemicals in the environment — in 1976, Gerald Ford was still President and Queen's "Bohemian Rhapsody" was the No. 1 song of the year.

Thirty-four years have passed since the TSCA's adoption, and in that time nearly every major environmental law of the 1970s — like the Clean Air Act and the Clean Water Act — has been revised to reflect changing science and greater public concern about the environment and human health. But the TSCA has remained stuck in the 1970s, an aging throwback that never gave Washington any real power to protect people from potentially toxic chemicals. (See TIME's special report "Environmental Toxins.")

It may finally be time to bring chemical regulation out of the polyester era. On April 15, New Jersey Senator Frank Lautenberg introduced new legislation that would overhaul the regulatory system, requiring manufacturers to prove the safety of chemicals before they could be sold. That represents a much needed change from the current system, in which the burden of proof falls on the Environmental Protection Agency (EPA) to show that a chemical is dangerous to human health or the environment before the agency can regulate it. "America's system for regulating industrial chemicals is broken," said Lautenberg in a statement. "My Safe Chemicals Act will breathe new life into a long dead statute by empowering the EPA to get tough on toxic chemicals."

Environmental and health groups hailed Lautenberg's legislation, the product of more than a year of consultation with green groups, regulators and the chemical industry. "The Safe Chemicals Act would go a long way to bringing chemical safety into the 21st century," says Andy Igrejas, the national campaign director for Safer Chemicals, Healthy Families, a coalition of pressure groups concerned with chemical safety. "We are very excited about the debate that's going to begin today." (See the top 10 green ideas of 2008.)

Lautenberg has been trying for the past couple of years to push reform of the TSCA, but this time it might actually take. Even the chemical industry, which has long resisted stronger regulations, agrees that the TSCA has its flaws and is open to a new law. "This is a complex issue, and we compliment Senator Lautenberg and Congressmen [Henry] Waxman and [Bobby] Rush for bringing focus to the need for modernization of the TSCA," said Cal Cooley, president of the American Chemistry Council, in a statement.

Green groups would say that's an understatement. The TSCA grandfathered in more than 60,000 industrial chemicals that were already in use in 1976, with no safety testing, including chemicals like bisphenol-A, the endocrine disruptor that more recent studies have shown could have a serious impact on developmental health. New chemicals went straight to the marketplace with little government oversight — in the 34 years since the TSCA was enacted, the EPA has required testing for only 200 chemicals out of the more than 80,000 available for use in the U.S., and has regulated only five.

How weighted is the TSCA toward industry? The law didn't even give the EPA enough power to ban asbestos, a known carcinogen that still contributes to the deaths of more than 10,000 Americans a year. "Under the new act, the legal burden of proof would be borne by industry," says Richard Denison, a senior scientist at the Environmental Working Group. "That's the fundamental change in the philosophy behind the bill."

The bill will eventually allow for the testing, in some format, of every chemical in use in the U.S. today, but chemicals of concern — for which existing data suggest potential harm to human health or the environment — would likely move to the front of the list. Green groups have some concerns that nonpriority chemicals would be allowed to enter the marketplace while they wait to be tested — a process that would likely take years. "That's a provision that's at odds with the fundamental profile of the bill," says Denison.

Still, activists are feeling hopeful about the chances for improving the country's antiquated chemical regulatory system. It's long overdue: new research has linked industrial chemicals, even in very small doses, to everything from obesity to breast cancer to behavioral problems, with children being especially vulnerable. "It's time to stop using kids as the canaries in the coal mine," says Dr. Alan Greene, a pediatrician at the Stanford School of Medicine. "I couldn't be more excited that this law is being introduced."

Thursday, April 15, 2010

Chemical weapons cleanup blast set to go in D.C. (*Washington Times*)

Deborah Simmons
The U.S. Army Corps of Engineers' plan to detonate some World War I-era chemical weapons in the Spring Valley neighborhood remained Wednesday in place as the city dashed to have a public-safety plan ready to go.
The detonation remains scheduled for Thursday, as has been the case for weeks. However, residents pushed their better-safe-than-sorry approach to lawmakers, and city officials agreed to come up with a safety plan though it was still being devised late Wednesday afternoon.

The corps plans to denote 24 chemical munitions found on federal property in Spring Valley — home to the embassies of Qatar and South Korea, Sibley Memorial Hospital, the Dalecarlia Water Treatment Plant and pumping station, Wesley Theological Seminary and American University.

The Army conducted research and chemical-weapons testing there during the war. Unexploded military ordnance were found during new construction in the area in 1993, and remediation and cleanup have been ongoing since then.

The disposal process, which the corps calls the Explosive Destruction System, calls for enclosing the weapons in a sealed steel chamber that allows for safe detonation. The Army has used the process accident-free on more than 1,700 occasions, including in 2003 to destroy chemical rounds in Spring Valley. However, destroying arsine, which contains blistering agents, in a residential area would be a first — and that's what sparked D.C. residents' concerns.

The Army has never destroyed explosive-configured arsine shells in or adjacent to a residential community, a reservoir or a hospital, Advisory Neighborhood Commissioner Tom Smith, who lives in the area, told The Washington Times.

Todd Beckwith, the corps' project manager for munitions destruction, nevertheless tried to assure D.C. Council members Mary M. Cheh and Phil Mendelson at a March 29

hearing that the corps' No. 1 priorities are "to protect human health and the environment" during detonations.

But he said the corps had no safety plans or measures for the general area.

"We were not planning on taking additional safety measures beyond federal property," Mr. Beckwith said.

Mr. Beckwith's testimony followed that of Mr. Smith and two other commissioners, who urged lawmakers to devise a backup safety plan that would notify residents of the corps' plan and alert them if something went awry.

Notices would come via e-mail, text and televised messages. Contingency plans, such as whether people should shelter in place, would be included. Residents also said use of an emergency siren should be considered.

The D.C. Homeland Security and Emergency Management Agency began devising the plan after consulting with the D.C. Department of the Environment, one of the lead agencies, along with the U.S. Environmental Protection Agency, that partners with the corps to clean up the former munitions site.

Residents are as concerned about potential airborne problems as they are water contamination at Dalecarlia reservoir, which is the primary drinking-water source in the nation's capital.

"As most residents have said to me," Mr. Smith said, "this is a foolhardy idea — these weapons should either be sent outside the community and stored at a military weapons facility that is built just for this purpose or destroyed at such a facility. There is no reason why D.C. residents should face even the slightest — even if improbable — risk from such an event. … Only in Washington would something so clear get so muddled."

New toxins found in Spring Valley (*Washington Post*)

The Army Corps of Engineers last month found three jars of a highly toxic liquid chemical at the Spring Valley World War I munitions cleanup site, officials announced this week, and closed a dig there while experts review safety and removal procedures.

Dan Noble, the corps' Spring Valley project manager, said workers unearthed the half-liter jars of **arsenic** trichloride March 29 at 4825 Glenbrook Road in the Northwest Washington neighborhood. Two of the jars -- one of which was broken -- began to smoke when they were unearthed. The leaking **arsenic** trichloride was likely reacting with the air to produce hydrochloride gas, he said.

Noble said the excavation was closed down. Two of the jars were packaged at the site and probably will be removed Friday. The third jar, which had not opened, has been

taken away, he said. Noble said that there was no danger to the surrounding neighborhood but that such chemicals needed to be handled with great care.

He added that although **arsenic** trichloride was on the corps' list of possible finds at the former chemical weapons experimentation station at nearby American University, it was the first time it had been found at the Glenbrook Road excavation. Noble said that during the war, scientists tested **arsenic** trichloride to see whether it would work as a chemical weapon or enhance the potency of other weapons.

The corps has been digging at various locations in Spring Valley and removing munitions and fragments on and off since the 1990s.

-- Michael E. Ruane

Friday, April 16, 2010

EPA's new lead paint rule riles renovators (*Business Gazette*)

Regulation requiring certification will increase costs, some say
by Lindsey Robbins and Steve Monroe | Staff Writers
New federal lead paint regulations that take effect Thursday will add substantially to the cost of operations and projects, potentially driving away customers, some in the state's remodeling industry say.
Under the new Environmental Protection Agency rule, contractors performing renovation, repair and painting projects that disturb lead-based paint in homes, child care facilities and schools built before 1978 must be certified and follow specific work practices to prevent lead contamination. The Lead Renovation, Repair and Painting Rule follows previous EPA guidelines that have required lead-safe practices and other actions to prevent lead poisoning.

"It's a mess," said Jim Rafferty, marketing manager for Welsh Construction Remodeling Co. in Baltimore, of the new rule. "The trouble will be explaining why the cost went up."

Rafferty, whose business has 50 employees, said the new regulations will affect more than half of the homes on which the company works. He said Baltimore previously has been a hotbed for lead paint concerns, especially in its multiunit divisions. Welsh already has certified its project manager in lead contamination prevention and submitted the company's certification, which faces a 90-day backlog.

Others in the industry also aren't pleased.

"This is just another fine attempt of regulatory efforts to make the world safer," said Jay Van Deusen, owner of Van Deusen Construction in Bel Air. "We were just starting to come out of this nasty recession stuff and of course the government has this kickoff date."

Van Deusen lamented the $300 certification classes the regulations will require for contractors, saying remodeling projects can cost thousands of dollars on their own for a large house. More than 85 percent of Van Deusen's work falls under the regulations.

The EPA announced that it expects more than 125,000 renovation and remodeling contractors to be trained in lead-safe work practices by Thursday.

"There has been tremendous progress by people working in the construction and remodeling trades to become trained in lead-safe work practices," said Stephen A. Owens, assistant administrator for the EPA's Office of Prevention, Pesticides and Toxic Substances, in a statement.

"EPA has been working hard to get the word out far and wide to contractors working in older homes, schools and day care centers that this training is available to help stop lead poisoning in children," Owens said. "All a contractor needs to do to be certified is take a simple, one-day course."

The EPA said that despite almost 30 years of efforts to reduce childhood lead exposure, 1 million American children still are affected by lead paint each year, putting them at risk for a wide range of health problems, including lowered IQ and behavioral disorders. Some of that poisoning is a result of dust contaminated by old lead paint that is stirred up during remodeling activities.

Dale Kemery, spokesman for the U.S. Environmental Protection Agency, said those who do not comply with the EPA rule are liable for a fine of up to $37,500.

Some contractors are not balking at the ruling.

Bruce Case, president of Case Design/Remodeling of Bethesda, said in a statement his company is ready to comply and has taken "significant measures including certification training of key team members and purchasing all necessary materials and equipment."

On the added cost issue, Case said in an interview: "It is going to add to the cost somewhat, but we already do a lot of dust protection and containment ... and anyway we feel the health of homeowners and our employers overrides that [added cost factor]."

Case, calling the added cost "incremental," said figuring out how much added cost the ruling means for contractors and consumers, depends on the type of job.

"It varies," he said. "It depends on the number of rooms. I'd probably say it will add a couple of hours, as a baseline. Some jobs are small, so adding a couple hours in a small job, that's a bigger hit, but for larger jobs, not that big a hit overall." Case said his workers' rates are about $60 an hour for smaller jobs, and $80-$90 an hour for larger jobs.

But Robert Touse, owner of Touse Remodeling in Columbia, said he predicts remodeling costs will increase by at least 10 percent because of the new regulations.

"I'm sure across the board you're going to have [customers] saying it's too much for the project," he said.

Touse said typical procedures for handling older remodeling projects include enclosing the area, taping it down from floor to ceiling, wearing proper clothes to handle the lead dust and possibly packing everything back up and using a specialized vacuum to clean the area if the project takes more than a day.

"We'll have to look for fewer jobs in older homes or different clientele that will be willing to pay the higher costs," Touse said. He is scheduled to take the certification test in two weeks. "Some contractors may just not take the precautions," he said.

"We're now competing against unemployed carpenters who won't care as much about regulations," Van Deusen said. He added that he can understand the safety merits of the regulation, but said the new regulations will be difficult to enforce unless the EPA hires more inspectors.

"We don't expect any relief from the law," Van Deusen said. "We think people will just take chances."

According to the EPA, child-occupied facilities are defined as "residential, public or commercial buildings where children under age six are present on a regular basis. The requirements apply to renovation, repair or painting activities."

The rule doesn't apply to minor maintenance or repair activities where less than 6 square feet of lead-based paint is disturbed in a room or where less than 20 square feet of lead-based paint is disturbed on the exterior. Window replacement is not minor maintenance or repair, according to EPA guidelines.

"As of right now, we remain relatively unaffected because most of our work is in more recently constructed buildings," said Joseph F. Betz, president of construction company RMS of Ijamsville, in an e-mail. "However, I believe we will need to obtain these certifications in order for RMS to compete for business in buildings that will inevitably fall within the EPA designated structure types, and any other building types added at a future date. Costs are somewhat burdensome when you take into consideration the $300 EPA fee and the cost for training and re-certifications which vary."

Steve Meszaros, president of the Maryland Association of Realtors and office manager for Long & Foster in Glen Burnie, said in an e-mail the regulations shouldn't cause much worry for real estate agents, because for many years they have had to alert homeowners to the possibility of lead paint in houses built before 1978.

"We let them know about it and that they have the right to have it remediated," Meszaros said. If it then causes problems closing a sale or rental agreement, "that's too bad, because lead paint is a hazard and it's something that should be fixed."

Kemery of the EPA said that while the new regulation is important, the agency also recognizes the potential for an unfair competitive advantage if companies do not comply with the regulations.

For these reasons, he said EPA is working with the 10 EPA regions across the country to develop a "robust compliance monitoring and enforcement program" for implementation of the lead-based paint renovation, repair and painting rule. Contractors or others who become aware of situations where work is not being conducted in compliance with these regulations may contact EPA, according to EPA information.

EPA proposed the rule in January 2006. The final rule was published in April 2008, and becomes fully effective Thursday.

While developing the rule, EPA conducted extensive economic analyses, which show that the requirements of the rule are not excessive or overly burdensome, in light of the importance of avoiding the potentially severe consequences of exposure to lead-based paint hazards.

Winners in war on toxic chemicals (*San Francisco Chronicle*)

(California)
April 16, 2010 Friday
FINAL Edition
Business; THE BOTTOM LINE; Pg. D1
Winners in war on toxic chemicals
When it comes to saving the Earth from toxic chemicals, an environmental advocacy group has come to praise California businesses, not to criticize them.

Environment California, a statewide group with 50,000 members, issues a report today highlighting companies in the Bay Area and around the state that are "making California healthier and wealthier by designing products to be safe from the start, following the principles of green chemistry."

The report, which also calls for tougher federal and state regulations, spins off from the state's Green Chemistry Initiative, a project launched in 2007 by Gov. **Arnold Schwarzenegger**. Enshrined in legislation, the state's **Department of Toxic Substances Control** is working on new rules, scheduled to be implemented next year.

Cleaning up their act: The 12 companies named in Environment California's report, say its authors, are already observing the spirit of the initiative by "identifying

unnecessary hazards in their facilities, in their manufacturing processes and in the products they sell - and acting to eliminate them." Among them:

-- Oakland's **Kaiser Permanente**, noted for eliminating the use of IV bags and tubing containing phthalates, a chemical seen as dangerous to embryonic development, in its neonatal intensive care units. Kaiser is also moving to install phthalate-free carpets in its hospitals.

-- Cupertino's **Apple Inc**. and Palo Alto's **Hewlett-Packard Co**., for "eliminating a broad range of toxic chemicals from their products," including, in Apple's case, chlorine and bromine, which are found in PCBs. HP is cited for requiring its suppliers to avoid a list of restricted substances. Both companies "are prepared to rapidly respond to new evidence of potential hazards," the report says.

-- Chico's **Klean Kanteen**, for its BPA-free stainless steel water bottles and sippy cup spouts. The report notes the company's business "grew by more than 1,000 percent" in the wake of media stories about the dangers of BPA.

-- San Francisco's **Method** and **CleanWell Co**. and Oakland's **Clorox Co**. for their lines of "natural," nontoxic cleaning products. "The market for cleaning products designed with green chemistry in mind is currently estimated at more than $100 million per year, and growing rapidly," the report says.

-- Redwood City's **Codexis Inc**. Its customized enzymes developed for **Pfizer Inc**.'s megaselling Lipitor reduced waste and the need for solvents in the drugs' production process, and earned the company a Presidential Green Chemistry Challenge award from the U.S. **Environmental Protection Agency**.

Catching up: "California is leading the nation in green chemistry innovation," said **Pamela King Palitz**, a co-author of the report. "But the fact is other places, like Canada and the European Union, are already regulating chemicals more strictly. I think this report suggests that when our regulations are fully implemented, it will make California companies more competitive on a national and global scale."

It also comes along at an interesting time. Sen. **Frank Lautenberg**, D-N.J., introduced legislation Thursday mandating that new chemicals are proved safe before being put on the market, and that manufacturers provide health and safety data to the **EPA** on the estimated 87,000 currently in use.

The full report is at sfgate.com/ZJND. Details of the Department of **Toxic Substances** Control's regulatory proposals and other green chemistry information at sfgate.com/ZLW.

Good guys, really: As we have been following ad nauseam the financial and legal woes of the **Lembi** family, it's only fair to give a shout-out when it's being a corporate Good Samaritan.

As **C.W. Nevius** noted in Thursday's paper, the constantly besieged formerly homeless shoeshine man, **Larry Moore**, is being housed at a **CitiSuites** studio apartment. The apartment comes with a discounted rent provided by CitiSuites' owner - the Lembi family.

How a senator battled the formaldehyde link to cancer (*Examiner*)

April 15, 1:54 PM · Bruce Maiman - Populist Examiner
This is classic politics as usual.
Formaldehyde has been linked to leukemia and several other kinds of cancer, but despite its health risks, it's not included on the Environmental Protection Agency's list of "known" carcinogens. It's currently considered a "probable" carcinogen.

As **ProPublica** notes, the issue of formaldehyde is especially loaded in Louisiana, "**where thousands of Hurricane Katrina victims claim they suffered respiratory problems after being housed in government trailers contaminated with the chemical**."

So why hasn't the EPA placed it on their list of known carcinogens? Largely due to the efforts of **Louisiana Senator David Vitter, who has petitioned on behalf of the formaldehyde industry to delay reclassifying the chemical**. Guess what's a big industry in Louisiana? That's right. Guess who's taken in tens of thousands of dollars from Louisiana formaldehyde companies and corporate lobbyists. That's right.

Last year, when it looked as if the chemical was about to be reclassified, Vitter **put a hold** on an EPA official's appointment until the organization agreed to subject the chemical to an outside review. In 2004, a similar review took place after Oklahoma Senator **Jim Inhofe demanded that the EPA wait on a "robust set of findings" before reassessing the chemical**. These more robust results were released last year, and they confirmed that **people exposed to the chemical "had a 37 percent greater risk of death from blood and lymphatic cancers and a 78 percent greater risk of leukemia**."

The day the study was released, a Formaldehyde Council lobbyist donated $2,400 --the maximum amount allowed-- to Vitter's re-election campaign. Late last March, the same lobbyist threw a thousand-dollar-per-person fundraiser for Vitter.

A former leading public health official told ProPublica, "This gives the appearance of another Congressman being more interested in industry than the health of the public."

Now here's the scary part:

As a reader below pointed out: "Since the formaldehyde producers are corporations, and under Supreme Court rule deemed an individual who has the rights of free speech, $2,400 is a drop in the bucket. **They can pay for a large scale advertising campaign supporting LA Senator Vitter for re-election and bypass the lobbying process**. Now *that's* efficient."
--h/t to Lisa Griffith, Knoxville Democrat Examiner

Lautenberg bill would strengthen chemical safety laws (*Cherry Hill Courier Post*)

By RAJU CHEBIUM • Courier-Post Washington Bureau • April 15, 2010

WASHINGTON - Legislation introduced Thursday by Sen. Frank Lautenberg would overhaul the nation's chemical safety laws to increase federal regulation of potentially dangerous substances in everyday products.

The bill by the New Jersey Democrat would beef up the Environmental Protection Agency's oversight of the chemical industry, a major employer in the state.

In an unusual twist, the chemical industry supports the Lautenberg bill and companion legislation filed in the House by Rep. Henry Waxman, D-Calif., and Rep. Bobby Rush, D-Ill. But the industry's lobbying arm, the American Chemistry Council, extended only partial support.

In addition to increasing the number of chemicals the EPA can regulate, Lautenberg's so-called "Safe Chemicals Act of 2010" would require chemical manufacturers to prove the substances they use or plan to use are safe.

The legislation, which is certain to change as it moves through Congress, seeks to upgrade a 1976 chemical safety law. The EPA worked with Lautenberg on the bill.

"Parents are afraid because hundreds of untested chemicals are found in their children's bodies," Lautenberg said in a statement. "EPA does not have the tools to act on dangerous chemicals, and thechemical industry has asked for stronger laws so that their customers are assured their products are safe."

Under current law, the EPA can require safety testing only if there's evidence a particular chemical is dangerous. The EPA says the provision limits the number of tested chemicals to 200, though more than 80,000 substances are registered for use in the U.S.

Only five chemicals have been banned so far. The legislation would allow more chemicals to be tested.

The Natural Resources Defense Council, an environmental group, said the bill would provide
more information about chemicals widely used in manufacturing.

"If this legislation fulfills its promise, we can hope to see a decline in cancer, learning and
developmental disabilities, infertility and other diseases associated with exposure to these
chemicals," said Daniel Rosenberg, an NRDC attorney.

The American Chemistry Council said the 1976 law needs to be updated and called the legislation a good first step.

While the Lautenberg bill incorporates some industry proposals, such as prioritizing chemicals
based on the risks they pose, the measure could stifle business innovation and sow confusion by
allowing states to write their own chemical security laws, the group said in a statement.

New Jersey's chemical security law is considered stronger than the federal statute. The industry has long opposed state laws, saying it prefers to deal with a uniform set of standards written by the federal government.

Contact Raju Chebium at rchebium@gannett.com

Angie's List: New Lead Paint Law Causing Problems (*WCPO*)

Reported by: John Matarese
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Reported by: **John Matarese**

More reasons to carefully check out the next contractor who works on your house.

As of next week, the EPA will require any contractor who might disturb lead paint in homes to be trained and accredited in proper lead safety techniques.

Starting **April 22, 2010,** a **new EPA rule** goes into effect that requires any contractor who runs the risk of disturbing lead-based paint to be certified in proper safety techniques.

This will affect many homeowners, because according to our partners at the consumer guide **Angie's List**, 80 percent of people in the Cincinnati area live in houses that were

built before 1978.

That's when the government passed a ban on lead-based paint.

What the Law Means for Your Next Project

Angie Hicks, founder of Angie's List says "before this rule went into effect, contractors only had give consumers a pamphlet about the risks of lead-based paint. Now the contractor is actually going to have to get certified in these safety techniques so this is definitely a step in the right direction."

Angie says this new law means you really need to check out your home improvement contractor.

Angie says "consumers shouldn't take for granted that all contractors are certified in this new safety technique. You should ask about the certification and then verify it. Don't just take their word for it."

- The law requires contractors to carefully contain poisonous lead dust.
- It also prohibits unsafe practices, including open-torch paint burning and using sanders that don't contain a HEPA filter.

Prior to the new rule, all contractors were required to do was notify homeowners of the dangers of lead paint.

Could it be Delayed?

Many contractors have not yet been certified to work with lead paint under the new rules. For that reason, some members of Congress are now asking for an extension of the date the new law takes effect.

As always, don't waste your money. I'm John Matarese.

Industry Must Prove Safety Under Proposed Safe Chemicals Act (*Environment News Service*)

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WASHINGTON, DC, April 15, 2010 (ENS) - Legislation to require safety testing of all industrial chemicals, which puts the burden on industry to prove that chemicals are safe in order stay on the market, was introduced in both houses of Congress today.

Introducing his new bill, U.S. Senator Frank Lautenberg, a New Jersey Democrat, called the Toxic Substances Control Act of 1976 now in force, "an antiquated law that in its current state, leaves Americans at risk of exposure to toxic chemicals."

Lautenberg, who chairs the Senate Subcommittee on Superfund, Toxics and Environmental Health, says his bill, the Safe Chemicals Act of 2010, will give the U.S. Environmental Protection Agency more power to regulate the use of dangerous chemicals. It requires manufacturers to submit information proving the safety of every chemical in production and any new chemical seeking to enter the market.

Under the current law, the EPA can only call for safety testing after evidence surfaces demonstrating a chemical is dangerous. As a result, EPA has been able to require testing for just 200 of the more than 80,000 chemicals currently registered in the United States and has been able to ban only five dangerous substances.

In 2009, the Government Accountability Office, which is the investigative arm of Congress, named the Toxic Substances Control Act a "high-risk" priority and one of the areas most in need of broad reform.

"With virtually no rules governing the safety of chemicals," says Richard Wiles of the nonprofit Environmental Working Group, "American babies are born pre-polluted, their bodies laced with as many as 300 industrial compounds, pollutants, plastics, pesticides and other substances that threaten public health."

"America's system for regulating industrial chemicals is broken," said Lautenberg. "Parents are afraid because hundreds of untested chemicals are found in their children's bodies. EPA does not have the tools to act on dangerous chemicals and the chemical industry has asked for stronger laws so that their customers are assured their products are safe."

In the House Congressman Bobby Rush of Illinois, who chairs the Subcommittee on Commerce, Trade, and Consumer Protection, and Congressman Henry Waxman of California, who chairs the Energy and Commerce Committee, released their discussion draft of legislation to revise the Toxic Substances Control Act.

The chairmen will be working with committee members and stakeholders to refine the legislative draft and have said they want to complete committee action by mid-summer.

The Environmental Protection Agency and other stakeholders, including the American Chemistry Council and a public health, labor, and environmental coalition, have issued principles stating their priorities for legislation.

"These various sets of principles all have a remarkable degree of similarity," noted Rush and Waxman, who say their draft legislation reflects "reasoned consideration of stakeholder and EPA priorities and recommendations."

"For decades, Congress has been told that the Toxic Substances Control Act is failing its mission and is in desperate need of reform," said Waxman. "In order to protect all Americans from toxic exposures and the adverse effects they cause, Congress must strengthen this failing law."

Over the past several months, the EPA, the states, industry, environmental groups and labor have told committees in the House and the Senate what their priorities are for reform of the toxic substances law.

Rush said that all of this information will be valuable as legislators craft the law that will "manage the health and environmental risks associated with the tens of thousands of chemicals that we find in our communities, homes, personal and work spaces, food and our bodies."

On behalf of the industry, American Chemistry Council president and CEO Cal Dooley said today, "While TSCA has been protective of public health and the environment in the past, we should harness the scientific and technological advances made since its passage to assess the safety of chemicals while fostering innovation and preserving hundreds of thousands of American jobs."

"We are encouraged that the Safe Chemicals Act reflects some aspects of the principles that American Chemistry Council released last year, which are mirrored by EPA's principles," said Dooley. "These include the need to prioritize chemicals for evaluation, a risk-based approach to EPA safety reviews, and a reduction in animal testing."

But Dooley said the council is concerned that the bill's decision-making standard "may be legally and technically impossible to meet."

"The proposed changes to the new chemicals program could hamper innovation in new products, processes and technologies," Dooley said. "In addition, the bill undermines business certainty by allowing states to adopt their own regulations and create a lack of regulatory uniformity for chemicals and the products that use them."

Safer Chemicals, Healthy Families, a coalition of more than 200 public health and environmental organizations, announced support for the new legislation.

"The Safe Chemicals Act goes a long way toward bringing chemical policy into the 21st century," Andy Igrejas, director of Safer Chemicals, Healthy Families, told reporters on a teleconference today. "We look forward to working with Congress to strengthen the bill to keep dangerous chemicals out of the marketplace."

"We applaud Senator Lautenberg and Congressmen Waxman and Rush for introducing legislation that would dramatically improve our nation's chemical safety system," said Dr. Richard Denison, a scientist with the Environmental Defense Fund. "Their continued leadership will be vital, however, to make several needed improvements in the bill as it

moves through the legislative process, to ensure it delivers on its promise to implement a safety system that truly protects all Americans."

The coalition called for improvements in three areas. As currently drafted, the legislation would:

- Allow hundreds of new chemicals to enter the market and be used in products for many years without first requiring them to be shown to be safe.
- Not provide clear authority for EPA to immediately restrict production and use of the most dangerous chemicals, even persistent, bioaccumulative, and toxic chemicals, which already have been extensively studied and are restricted by governments around the world under a treaty known as the Stockholm Convention on Persistent Organic Pollutants
- Would not require EPA to adopt the National Academy of Sciences' recommendations to incorporate the best and latest science when determining the safety of chemicals, although the Senate bill does call on EPA to consider those recommendations

Yet environmental justice groups found much to like in the bill, particularly the provisions that require the EPA to develop action plans to reduce the disproportionately high exposures to toxic chemicals in some communities.

"There are many communities, especially communities of color, tribal lands, and low-income communities, where people are dying at extraordinary rates because of toxic chemical exposure. This bill, for the first time, would give EPA authority to identify these communities and protect them from major sources of toxic chemicals," said Mark Mitchell, MD, president of the Connecticut Coalition for Environmental Justice.

"It's high time we closed the gap between what scientists say is safe, and what our government allows on supermarket shelves," said Maureen Swanson from the Learning Disabilities Association of America. "This bill represents a major advance toward giving American families the peace of mind they've been seeking."

Wiles points out that, "The bill would also peel away the shroud of secrecy that allows only industry and select EPA employees to see 'confidential' data on chemicals. As a result, two-thirds of all synthetics brought to market in the past 30 years have been secret chemicals, their identities concealed from the public and independent scientists. Even first responders and state health authorities have no access to these chemical identities and safety data about them."

People for the Ethical Treatment of Animals has been working behind the scenes to make sure that animal testing is minimized in this legislation, the organization said in a statement today.

"The science underlying the new chemical-management law can be updated with recent advances in science and technology that allow for more useful information to be

gathered without extensive animal testing," PETA said. "Incorporation of these new approaches must be the foundation of any new legislation in order to improve efficiency, speed, and protection of human health and the environment, while cutting costs and reducing animal suffering."

Senator Lautenberg said he expects legislators on both sides of the aisle to support his bill. "Chemical safety reform is not a Democratic or Republican issue," he said, "it is a common-sense issue and I look forward to building bipartisan support for this measure."

Remodeling costs could jump next week because of new federal rule, contractors say (*Plain Dealer*)

By Stephen Koff, The Plain Dealer
April 15, 2010, 7:10PM
WASHINGTON, D.C. -- Planning to get new windows installed, or a room remodeled? If your home was built before 1978, your contractor might have to proceed much more cautiously as of next Thursday, April 22, because of a new federal regulation to guard against lead paint dust.

Contractors who install windows or bathrooms say they might have to wear protective outfits and respirators, and bring thick plastic sheeting and special vacuum cleaners with heavy-duty filters for routine jobs. Roofing crews could wind up dressing like HazMat teams if eaves or roof vents with lead paint must be replaced, sanded or repaired.

Contractors across the country contend that these precautions, as well as the time it will take to suit up and follow the new rules, will drive up the cost of home repairs. A $5,000 window-replacement job could cost $1,500 more, said several contractors.

"It's a big cost," said Richard Kasunic of Macedonia, a window installation specialist with crews across Cleveland. "Huge."

"Who's going to pay for it?" asked Doug Dervin, a Long Island, N.Y., contractor. "Me and the homeowner are going to be paying for it."

The **Environmental Protection Agency** estimates a much lower cost: $8 to $167 extra per job.

Environmental groups and children's advocates support the program. The **Cleveland Foundation** recently gave a $65,000 grant through the **Cuyahoga County Board of Health** to help inner-ring Cleveland suburbs integrate it.

Yet Home Depot, too, says the program might be moving ahead too quickly for contractors to comply. Ten U.S. senators, including Ohio's **George Voinovich**, wrote to

the **White House Office of Management and Budget** last month to ask that the EPA slow down.

The disagreement is over provisions of the new Lead Paint Certified Program. Years in the making, it requires contractors to be trained and EPA-certified in handling lead paint, which can cause neurological damage if ingested. Children under age 6 are especially susceptible.

Of roughly 24,000 Cuyahoga County children under age 6 who were tested in 2008, nearly 1,200 had elevated lead levels, according to the Cuyahoga County Board of Health. Many homes built before 1978 contain lead paint, so the rule could affect a majority of remodeling jobs in Northeast Ohio.

The new rule requires testing for lead paint if more than six square feet of interior space will be disturbed, or if an exterior project involves more than 20 square feet. Although the rule is specifically for homes where there are children under age 6 or pregnant women, contractors must tell all other clients that they, too, can request lead testing, and contractors say most customers will want it.

If lead paint is detected, contractors must use extensive safety measures to contain the dust and paint chips created during remodeling. Depending on the jobs, they can advise families to move furniture, go to hotels, and stay home from school while the work is done. Contractors can be fined $37,000 a day if they fail to comply.

Do-it-yourself home renovators will not have to follow these rules, although the EPA advises that they do so.

Building contractors and their trade associations insist they support the program's goals. But they say there are not enough companies qualified to teach and certify contractors in every state, and that many independent contractors don't even know about the rule. They also fear lead testing kits will run out.

"I think there's going to be a bidding war" for them, said John Rigrod, publisher and editor of Hammer magazine, which covers the remodeling industry.

EPA spokesman Dale Kemery suggested that the worries, including higher costs, are unwarranted. He said the new procedures are "doable," not horrible.

Chemical Safety Reform Gains Momentum in Congress (*Science Now*)

by Science News Staff on April 15, 2010 7:28 PM

Two bills in Congress would dramatically strengthen the Environmental Protection Agency's (EPA's) ability to regulate chemicals. The bills shift the burden of proof to industry, which would have to demonstrate the safety of existing and new chemicals. That's a major change from the existing system, in which EPA must prove that chemicals are harmful before it can regulate them.

"This is a monumental sea change," says Richard Denison of the Environmental Defense Fund in Washington, D.C. A major chemical industry trade group is also backing the reforms but has concerns about key details in the bills.

The current legislation that governs chemical regulation, the Toxic Substances Control Act, has not been updated since it was passed in 1976, and its requirements have restricted EPA's ability to regulate chemicals.

For example, EPA must show that a chemical poses a health risk before it can require companies to provide safety data.

Under a bill introduced today by Senator Frank Lautenberg (D-NJ), companies would have to provide a minimum set of data to EPA, which would have the authority to also ask for more details in order to determine safety. For existing chemicals, companies would have 15 years to provide data. But EPA would have to create a high-priority list of 300 chemicals that it considers most dangerous and that require faster evaluation.

Environmentalists are concerned about the process for new chemicals, which is somewhat looser. If companies determine that a new chemical is unlikely to pose a health risk—for example if it's not expected to be carcinogenic or produced in high volumes—then EPA won't go through the data set to assess its safety before it's commercialized. "It makes no sense to provide such a loophole," said Maureen Swanson of the Learning Disabilities Association of America in Pittsburgh, Pennsylvania, on a teleconference with reporters.

A big question is how to evaluate safety. The bill adopts a definition used by EPA to evaluate pesticides, which calls for a "reasonable certainty of no harm." It would require a calculation of all routes of exposure, such as from eating food or breathing dust. That's going to be much more complicated for industrial chemicals, which can be used in thousands of products, says Cal Dooley, president and chief executive officer of the American Chemistry Council in Arlington, Virginia. "We don't know whether it's technically possible to comply with," he says.

The bill also contains an exemption for chemicals used in small quantities for research or analysis. It also directs EPA to create a green chemistry research grant program and establish a network of at least four research centers to help find safer alternatives to dangerous chemicals.

Representative Henry Waxman (D-CA), who heads the House Energy and Commerce Committee, released a similar discussion draft today and intends to have hearings in June or July.

Key Differences Remain Over TSCA Reform On Eve Of Bill's Introduction (*Inside EPA*)

4/16/2010
On the eve of lawmakers introducing a highly anticipated bill to reform the Toxics Substances Control Act (TSCA), key differences remain between industry and activists over several aspects of toxics law reform, though Democrats are downplaying recent suggestions by EPA and industry that TSCA reform is unlikely this Congress.

Sen. Frank Lautenberg (D-NJ) at press time was set to unveil his TSCA reform bill April 15, with Rep. Bobby Rush (D-IL) introducing a draft House bill. While details of the bill were not available in advance, it remains to be seen how the lawmakers intend to address splits between industry and activists over major provisions, including the burden for proving that chemicals are safe and prioritizing chemicals for risk assessment, among others.

Steve Owens, head of EPA's toxics office, recently told state officials that despite stakeholder meetings to try and reach consensus on the scope of TSCA reform it is "unlikely" to pass this year. "[B]ut that is to by no means discount the longer-term prospect of reforming" TSCA, Owens told state officials (*Inside EPA*, March 26).

But Lautenberg told *Inside EPA* April 13 that, "I think the demand is there" to pass toxics law reform, citing health effects including cancer, neurological harm and asthma linked to chemicals that justify stricter laws to address risks from the substances. The senator said he would have a briefing for members of Congress and staff April 15 with "a couple of experts . . . on the relationship of chemicals to childbirth pediatric procedures."

Still, the senator demurred when asked whether TSCA reform will pass this year. "I don't want to think a date, but we're going to work to pass it," Lautenberg said. The senator's spokeswoman said that the bill could be introduced as early as April 15, but would not provide any further details on the legislation.

Resolving the differences could be key to moving the TSCA reform bill. Reps. Rush and Henry Waxman (D-CA), chairman of the House Energy & Commerce Committee, told stakeholders at an April 9 meeting they will hold weekly meetings in April and May to try to reach consensus on key aspects of TSCA reform, sources say.

Ahead of the bill's introduction, the Blue Green Alliance of environmental and labor groups April 14 released a set of principles for TSCA reform. The principles largely endorse similar goals sought by the Safer Chemicals, Healthy Families coalition of

activists, including: ensuring immediate action is taken to reduce exposure to the riskiest chemicals, giving EPA broad powers to require from industry any data it wants to assess the risk of substances, assessing chemicals on a health-based standard designed to protect vulnerable populations, and other issues.

Environmentalists recently held a press event to highlight their key provisions that they say industry opposes, including language that would require chemical makers to produce safety information for all chemicals, force EPA to take fast action on high-hazard substances and require safety assessments to consider cumulative exposure to chemicals, according to the Safer Chemicals, Healthy Families Coalition (*Inside EPA*, April 2).

Manufacturers, led by the industry association the American Chemistry Council (ACC), released a set of principles last August they would like to see in a "modernized" TSCA. These included providing EPA with greater authority to make determinations about the safety of chemicals; prioritizing chemicals for testing; and sharing information on chemicals with other governments and the public (*Inside EPA*, Aug. 7).

The two sets of principles suggest some overlap between the industry and activist groups, with industry officials admitting that they are pushing for "enhanced regulation" with their calls for modernization. But there are also areas that are ripe for controversy. For example, environmentalists have said that under the ACC principles, industry seems to be saying data should be developed on a case-by-case basis and only for priority chemicals, while activists would argue it should be developed for all chemicals upfront.

Another major concern in TSCA reform for industry remains prioritization -- companies argue that they do not have the resources to test and provide data on all of the 80,000 chemicals thought to be in commerce, while EPA does not have the resources to evaluate and manage such a massive inflow of data. Industry is instead pushing for "doable and defensible" TSCA measures (*Inside EPA*, April 12).

Science Advisers Appear Poised To Back EPA's Strict Arsenic Analysis (*Inside EPA*)

4/16/2010
A new review panel of the Science Advisory Board (SAB) appears to be backing EPA's most recent draft assessment of the cancer risks presented by inorganic arsenic, even as industry, water utilities and states are questioning the new assessment, which tightens EPA's existing risk estimate by 17 times. The issue is crucial to water utilities and states, who could face more costly treatment standards if EPA adopts the tougher risk finding for arsenic.

An SAB panel held an April 6-7 meeting in Washington, DC, to determine whether EPA had adequately adopted the recommendations three years ago of the SAB on the agency's Integrated Risk Information System (IRIS) assessment. EPA officials expressed concern that another to-do list could lead to additional delay before EPA releases a final arsenic risk assessment. The panel suggested that EPA's approach is appropriate, though some members questioned whether the risk estimate passes a "reality check." *Relevant documents are available on InsideEPA.com.*

Industry, however, remains concerned that the SAB panel is only considering a very narrow set of "charge questions" -- intended to determine whether the agency responded to a 2007 SAB panel review of its arsenic risk assessment. One consultant expressed concern during a break in the meeting that the panel is only considering the narrow questions put before the SAB panel, and not the broader scientific issues being raised by industry.

EPA's proposed cancer slope factor, a quantitative estimate of the potency of arsenic, is 25.7 miligrams per kilogram body-weight per day (mg/kg-day), compared to the existing estimate, of 1.5 mg/kg-day. Various industries have raised concerns that the new number would result in strict regulations on food and water containing naturally occurring arsenic that they cannot control.

EPA, however, has argued that its decisions were based on the recommendations of a 2001 National Academy of Sciences (NAS) arsenic panel report -- which considered the Taiwanese data the best available and recommended use of a reference group of southwestern Taiwan to compare with the townships. An agency source told *Inside EPA* last month that the agency's estimates of arsenic cancer risks are in the same "ballpark" as the NAS report.

Peter Preuss, the director of EPA's National Center for Environmental Assessment (NCEA), which manages the IRIS database, told the SAB panel that "coming back and asking how we did" is something NCEA has "never done before." He added that it was undertaken because of the "hue and cry over what we've done. EPA as a whole felt this might be a one-time effort to to check back with SAB to see what it is you think about what we've done."

Panel Chairwoman Elaine Faustman, a professor at the University of Washington, described a "catch 22," noting that it has been three years since EPA last published the document, and that new data has been published since. Asked if EPA will consider studies published since 2007, Preuss said, "We consider ourselves to have completed the document, up to a point in time. We were ready to complete [it]," he said. "Because of the many questions raised, we've come back and asked if we followed [SAB's recommendations.] I'm seriously hoping the deliberations of this panel are not giving us another list of things to do. It becomes endless."

Two major concerns raised by critics of the draft assessment regard the epidemiological data set EPA used in its calculations, data collected in southwestern Taiwan beginning

in the 1950s, and EPA's decision to use conservative linear modeling of risks at low levels of exposure. Consultants and industry representatives pointed to numerous shortcomings in the Taiwanese data and EPA's handling of it in the assessment during public comments April 6. They also urged the agency to reconsider its decision to use linear modeling. EPA's cancer guidelines require the agency to use linear modeling -- which assumes there is no safe level of exposure -- if the way in which a chemical causes cancer is mutagenic or unknown. Industry representatives encouraged EPA to consider using non-linear modeling, arguing that there is sufficient information about arsenic's mode of action to justify doing so.

But panel members, including Deborah Cory-Slechta of the University of Rochester, said there is not enough information about arsenic's mode of action (MOA) for causing cancer to justify a non-linear model. "I think it's well-defined in the [EPA] document that we're not at that point," she said. "We're not at a MOA."

George Daston, a Procter & Gamble scientist, agreed. He said his "intuition" suggests there is a safe threshold of exposure to arsenic -- meaning that a non-linear model could be appropriate, "But I also don't really see what the MOA is," he added. "I don't see how to make a convincing argument for an IRIS document."

Summing up the panel's conclusions April 7, Daston said the panel concluded that EPA considered linear and non-linear models, as requested by the 2007 SAB review panel. The analysis reveals that doing so "doesn't materially change the risk number," Daston said.

Panelist Tom Burke, of Johns Hopkins University, summed up the panel's consideration of the use of the epidemiological data by saying the panel "supports the selection of the key studies."

Daston also questioned EPA's high risk number, noting that it exceeds or accounts for a large percentage of the National Cancer Institute's (NCI) cancer incidence rates for bladder cancer and lung cancer, the two cancers that EPA's arsenic assessment considers most critical. "The risk estimates from the linear models are really high. As high as what NCI lists as total bladder cancer incidence for the U.S," he said. "It would also explain a large proportion of lung cancers in the U.S. -- it doesn't seem right to me. That said, I don't have a justification for using something less than linear."

Daston was seconded by another panelist, Tim Buckley of The Ohio State University, who argued that the NCI incidence rates are "evidence, data that should be taken into consideration. If it hasn't been, I think it ought to be." And Faustman noted that the issue is something "we see a lot in public health," raising the question of "where are the dead bodies?"

But Preuss asked, "What makes you think the numbers are too high?" He added that the incidence of lung cancer in the U.S. is "very high."

Burke noted that the NCI incidence data is calculated annually, not for lifetime risk, which IRIS assessments are intended to address. Daston acknowledged that he was comparing "apples and oranges" but maintained that the principle of a "reality check" remained.

"I think if you worked out the math it's not in excess of lifetime bladder cancer risk," Preuss said. "Having said that, I understand the issue you're raising. Don't think it hasn't caused us a lot of sleepless nights."

Consultant Joyce Tsuji urged SAB to consider the existing estimates of arsenic in U.S. soil and water supplies. In many places, both would exceed EPA's proposed 1 in 1 million risk of developing cancer over a lifetime from such a high cancer slope factor, she said during public comments at the meeting April 6. Tsuji, representing the international mining company Rio Tinto, said that eating more than one gram per day of numerous basic foods containing naturally occurring arsenic -- such as lettuce, apple juice, grapes and rice -- would exceed the 1 in 1 million risk level.

Her concerns echoed those of others raised in public comments submitted to the SAB, including those from drinking water utilities and the farming industry. They have raised concerns that background levels of arsenic in soil and drinking water exceed EPA's proposed new risk estimates. The utilities also argued that detection tests for arsenic in drinking water at a level of 1 in 10,000 person cancer risk are "limiting" with a "higher margin of error."

Key House Democrats Seek PBDE Data In Advance Of Oversight Hearing (*Inside EPA*)

4/16/2010
Key House Democrats are asking industry to provide extensive data on the environmental, health and safety risks of flame retardants, particularly polybrominated diphenyl ethers (PBDEs), ahead of a slated oversight hearing next month into the use and potential adverse impacts of the retardants.

House Energy & Commerce Committee Chairman Henry Waxman (D-CA) and Oversight & Investigations Subcommittee Chairman Bart Stupak (D-MI) sent April 12 letters to chief executives at three PBDE manufacturers requesting data about the chemicals and requesting their testimony at a May 20 hearing, which will be held in Stupak's oversight subcommittee. *Relevant documents are available on InsideEPA.com.*

The letter asks for information on the companies' "ten best-selling chemicals that are, or were, used as flame retardants"; submission of premanufacture notices and section 8(e) reporting on health studies submitted to EPA under the Toxic Substances Control Act (TSCA); and "any documents" related to potential environmental, health and safety

effects of the chemicals. Further, the letter asks for company communications comparing the safety effects of potential alternatives and the effectiveness of the chemicals.

“Under [TSCA], chemical manufacturers are not required to perform any toxicity testing on chemicals prior to release into the marketplace,” according to an April 12 statement announcing the hearings. “However, the persistent and bioaccumulative nature of flame retardant chemicals raises concerns regarding their impact on human health and the environment.” The committee statement says “a growing number of peer-reviewed studies” suggest possible adverse health effects from exposure to the substances, including “neurological, developmental, fertility, and reproductive problems in animals and in humans.”

Waxman and Stupak sent the letters to Charles Weidhas of ICL Performance Products, Craig Rogerson of Chemtura, and Mark Rohr of Albemarle, and ask for a response by April 26.

The three companies late last year entered into a voluntary agreement with EPA to phase out deca, a PBDE, within three years. But activists have raised concerns about the voluntary plan and are supporting a bill introduced by Rep. Chellie Pingree (D-ME), H.R. 4394, that would ban the import or use of deca in products by the end of 2013 and bar EPA from approving substitutes that are persistent, bioaccumulative and toxic.

Lautenberg introduces toxics reform bill, saying current regulation 'is broken' (*Greenwire*)

Sara Goodman, E&E reporter
04/15/2010
U.S. EPA would be given broad new authorities to target chemicals of concern and to regulate new and existing chemicals under legislation introduced today by Sen. Frank Lautenberg (D-N.J.).

The bill, called the "Safe Chemicals Act," would for the first time reform the 1976 Toxic Substances Control Act, or TSCA, to require manufacturers to provide information about chemicals in consumer products instead of presuming substances are safe until proven dangerous.

"America's system for regulating industrial chemicals is broken," Lautenberg said in a statement. "Parents are afraid because hundreds of untested chemicals are found in their children's bodies. EPA does not have the tools to act on dangerous chemicals, and the chemical industry has asked for stronger laws so that their customers are assured their products are safe."

The legislation would require manufacturers to provide a minimum data set for each chemical they produce, and EPA would have the authority to request any additional data it deems necessary to make a safety determination. At the same time, the bill seeks to avoid unnecessary or duplicative testing requirements.

EPA would also be required to prioritize chemicals based on that data set, looking at both exposure and hazard characteristics. The bill would instruct EPA to take quick action on those chemicals that clearly demonstrate high risk, and manufacturers would have to prove that a chemical is safe to keep it on the market.

EPA would be instructed to create a public database containing information about each chemical and EPA actions on that chemical, and the legislation would restrict which data can be claimed by industry to be confidential.

The bill also seeks to promote green chemistry by establishing a program to develop incentives for companies to make and use safer alternatives to some chemicals.

The key provisions in the bill largely mirror recommendations outlined by EPA Administrator Lisa Jackson last year, and at least in principle, they echo the reforms called for by environmental and health safety advocates.

"I'm really thrilled to know that today, today as we all sit here, in Congress for the first time we're going to see the introduction of a modern TSCA act, a brand new environmental law to deal with chemicals that are finding their way into our bodies, into our environments," Jackson said at a Washington, D.C., water conference today.

Richard Denison, a senior scientist at the Environmental Defense Fund and part of the Safer Chemicals, Healthy Families coalition, said the new bill represents a "sea change" from how TSCA currently manages chemicals.

"Most of the elements that our coalition has called for are in the bill, at least in skeletal form, and we think it provides a very good framework for advancing the debate on TSCA reform," Denison said. "There are several places where we're going to be seeking greater clarification or authority for EPA, however."

For example, Denison pointed to an exemption for how new chemicals are initially assessed within the principle requiring that manufacturers prove that a chemical is safe to keep it on the market. "This provision was one the industry sought to allow a chemical onto the market and then later assess it's safety," Denison said. "We think it's counterproductive."

Cal Dooley, the president and CEO of the American Chemistry Council, also highlighted areas his group will target as the bill moves forward, expressing concern about proposed changes to EPA's new chemicals program, as well as a provision allowing state pre-emption.

"[W]e are concerned that the bill's proposed decision-making standard may be legally and technically impossible to meet," Dooley said in a statement. "The proposed changes to the new chemicals program could hamper innovation in new products, processes and technologies. In addition, the bill undermines business certainty by allowing states to adopt their own regulations and create a lack of regulatory uniformity for chemicals and the products that use them."

WATER

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Federal clean-water fight comes to Jacksonville (*Florida Times-Union*)

Source URL: http://jacksonville.com/news/florida/2010-04-15/story/federal-clean-water-fight-comes-jacksonville

By Steve Patterson

A statewide dispute over planned federal water standards to fight algae blooms led both sides to a Jacksonville hotel Thursday for a final hearing on rules critics call a "water tax."

While people from businesses affected by the rules argued for changes or delays, environmental activists cheered the U.S. Environmental Protection Agency for acting on a subject the state studied for years without resolving.

"It is way past time to get on with these [rules]. ... They have drug their feet long enough," said Ben Williams, a seafood merchant from St. Johns County. He said algae levels, and the odor and health concerns connected with them, have helped drive some people away from buying locally caught fish.

As part of a lawsuit settlement, EPA agreed last year to set maximum levels of nitrogen and phosphorus allowed in Florida waterways. Both of those feed algae growth, a recurring concern for many people along the St. Johns River and other waterways.

The EPA levels would be numeric standards, which advocates said would be clearer and more useful than so-called "narrative" standards the state traditionally used. Those say nitrogen and phosphorous levels shouldn't be allowed to disrupt natural ecosystems.

The Florida Department of Environmental Protection had been researching how to set numeric standards for several years when EPA said it was stepping in.

The federal agency proposed standards in January for freshwater lakes and streams and for South Florida canals. It will propose standards for river estuaries, such as the St. Johns River in Jacksonville, next year.

Opponents of the EPA standards say they're tougher than needed and will make farmers, water utilities and others waste money.

The actual cost of cleaner water remains a matter of debate and rhetoric. EPA estimates its proposal might increase costs by up to $140 million annually statewide.

But affected business groups that formed a group called Don't Tax Florida have circulated forecasts of costs topping $50 billion that they say would put the state at an economic disadvantage against places with looser rules.

Partly because of the volume of critics' resistance, EPA had already held hearings in five cities before coming to Jacksonville's Clarion Hotel Airport, where about 100 people came for the first of two sessions scheduled Thursday.

Some critics lamented that the state hadn't finished its own standards.

"I'm for rules. I'm just for the process that DEP was following," said Jack Frost Jr., a Lakeland-area fertilizer salesman.

But the state had a lot of time to act, said St. Johns Riverkeeper Neil Armingeon, whose group was part of the lawsuit that led to EPA's proposals.

"This is a significant problem that is not being address at the state level," he said.

"Every summer for the past five years, it has come to our community and diminished the quality of our life," Armingeon said, adding that last year algae blooms on the St. Johns started by early spring and lasted in some form until this winter's sustained cold snaps.

Jeb Smith, a fifth-generation farmer from Hastings, said he worried about costs his family would incur and said past efforts to balance stewardship with the bottom line "are proving to be wasted."

Ephraim King, the science and technology director at EPA's Office of Water, asked Smith to describe some of those costs in writing later this month so people in his agency could look into them.

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EPA takes step towards cleaning water contamination under Alhambra, San Gabriel (*Pasadena Star News*)

By Rebecca Kimitch, Staff Writer
Posted: 04/15/2010 06:46:13 PM PDT

ALHAMBRA - Progress is finally being made in the federal effort to clean up cancer-causing contaminants polluting the groundwater under the San Gabriel Valley's final untreated Superfund site.

As the Environmental Protection Agency (EPA) begins planning how to clean the contamination, agency officials are meeting this week with Alhambra, Rosemead and San Gabriel residents to explain the extent of the problem.

"Now we have the data, so we can begin to consider ways to clean it up," EPA area project manager Lisa Hanusiak told residents at the Alhambra Library Wednesday.

But when that clean up can actually happen is unclear, she added.

The area in question, known as Area 3, includes the cities of Alhambra, San Gabriel and parts of Rosemead, Temple City, San Marino and South Pasadena. It was declared a Superfund site in 1984. But it was not until a few months ago that EPA scientists completed their full investigation on the extent of contamination there.

That investigation revealed extremely high levels of the carcinogens tetrachloroethylene (PCE) and trichloroethylene (TCE) - up to 300 times the level allowed for drinking water.

Those chemicals are used in degreasers, industrial solvents and dry cleaning solutions. They were leached into the groundwater after decades of dumping by businesses in the area in the decades during and after World War II.

The site also has dangerously high levels of 1,2,3-Trichloropropane, a chemical often used to seal airplanes that has "a high risk to humans at low levels," Hanusiak said.

Residents are not being exposed to the contaminants, authorities said. Water companies constantly test the groundwater they draw from wells in the area. If they find contaminants, they shut the wells down, treat the water to remove the contaminants, or blend the water with clean water to reduce the concentration of contamination to allowable levels, explained Gabriel Monares, director of resource development for the San Gabriel Basin Water Quality Authority (WQA).

The WQA has provided $3.2 million for a treatment plant used by the city of Alhambra to remove contamination. That plant removes the contaminants to non-detectable levels, Monares said.

Alhambra resident Eric Sunada said he is confident his drinking water is safe. But he pointed out that allowed levels of particular contaminants, and the ability to detect them, changes with research and technological advances.

Though the groundwater is being cleaned for isolated use, officials want to clear the entire aquifer of contaminants to maximize its use for water storage.

The EPA will spend the next year preparing several options to remove the contamination. Sometime next year, officials will select a remedy after evaluating the "techniques, costs, and challenges" of each option, Hanusiak explained.

"It's hard to predict when we will actually be cleaning it up," she added.

Part of the problem is figuring out how a clean up will get paid for. The site must compete for cleanup funding with Superfund sites across the country.

The EPA is attempting to determine the companies responsible for the contamination, in order to get them to pay for part of the cleanup, but that is proving challenging because the contamination occurred so many years ago.

"We think we've identified the worst responsible parties, but we're still investigating," Hanusiak said.

The list of potentially liable companies includes Valley Cleaners; LSI, formerly Agere Systems, Inc.; Ideal Iron Works; Pemaco Metal Processing Corporation; Los Angeles County; Johnson Controls, Inc., also known as IAP World Services, Inc.; and AECOM Government Services, Inc., formerly known as Holmes and Narver Services, Inc.

The EPA still has approximately 100 potential contaminators to investigate. And the state Regional Water Quality Control Board is still finding contaminated soil sites, according to engineering geologist Curt Charmley.

And, every so often, dry cleaners are found to still illegally dump contaminants, Charmley added.

Several other Superfund sites have been declared around the San Gabriel Valley. But while clean up plans have been in motion at those sites for years, action in Area 3 has been slower because the EPA determined contamination there to be less severe than in other areas.

The EPA will hold a second meeting on its findings Saturday at the Rosemead Library, 8800 Valley Blvd., from 2 to 4:30 p.m.

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Read more: http://www.pasadenastarnews.com/news/ci_14893797#ixzz0IFZGUNIw

Apr 15, 2010 7:44 am US/Eastern

Md. Congressional Delegation To Get Bay Update (*WJZ Channel 13*)

ANNAPOLIS, Md. (AP)
Maryland's congressional delegation will hear about the status of Chesapeake Bay restoration efforts at a hearing in Washington.

Sen. Ben Cardin will chair the briefing Thursday afternoon. The delegation is scheduled to hear from the Chuck Fox, the Environmental Protection Agency's senior adviser on the bay; EPA scientist Rich Batiuk; and Maryland Environment Secretary Shari Wilson.

The EPA is preparing a restoration strategy in response to an executive order issued last spring by the president. The federal agency has said the strategy will put the bay on a "pollution diet," establishing limits for various pollutants.

Apr 15, 2010 5:31 am US/Mountain

EPA Ranks Wyo. Tops In Providing Drinking Water (*Associated Press*)

Story also appeared: *CBS 4 Denver, Laramie Boomerang*

CASPER, Wyo. (AP) — Wyoming has been recognized by the Environmental Protection Agency for providing clean drinking water.

The EPA says the latest statistics show that Wyoming is at the top of the list for total compliance in drinking water. The compliance is based off the percentage of the total population that drinks water served by community systems and the health standards that the water must meet.

The Wyoming Association of Rural Water Systems has been holding its spring conference in Casper this week.

Information from: KCWY-TV, http://www.nbcforwyoming.com/

EPA Seeking Greater Specificity In Chesapeake Bay Pollution Loads (*Inside EPA*)

4/16/2010
EPA plans to test its ability to identify the nutrient pollution contributions from all point sources -- including municipal stormwater dischargers and concentrated animal feeding operations (CAFOs) -- in its watershed-wide Chesapeake Bay cleanup plan, with the goal of replicating the effort nationally, according to EPA Bay chief Chuck Fox.

When EPA develops a waterbody cleanup plan, known as total maximum daily load (TMDL), it takes into account both point sources and nonpoint sources of pollution and allocates a portion of the total pollution limit to each type of source. But historically the agency has not further distinguished between different types of point sources, Fox said April 13 at a meeting on watershed issues hosted by the Horinko Group, an environmental consulting firm.

EPA, however, is looking to include that type of specificity in future TMDLs, beginning with the one the agency is developing for the Chesapeake Bay, he said. “This is the kind of precision that we’re going to have to move into the system going forward, and to me is one of the futures of the national water program.”

In a followup interview with *Inside EPA*, Fox said the Bay TMDL will include numeric requirements for CAFOs and municipal separate storm sewer systems as well as municipal wastewater treatment plants, although there are some technical challenges that may prevent such numeric requirements from being present in all areas of the Bay’s tributaries.

For example, EPA lacks the ability to monitor and measure each MS4 outfall in Washington, DC, which makes it impossible to enforce a numeric limit. Other locations could also face funding and monitoring restrictions that would limit EPA’s ability to divide the TDML’s point source limits among municipal wastewater treatment plants, MS4s and CAFOs, he said.

Nevertheless, the Bay TMDL -- due to be finalized by the end of this year -- will be more specific about point source limits where it can, Fox said.

Achieving greater specificity for point source wasteload allocations is important for any nutrient trading system to be effective, Fox said, because better distinguishing between different types of point sources will make tracking nutrient credits easier and more precise.

Fox noted that the agriculture community has been critical of the models EPA is using to predict how the Bay as an ecosystem will respond to nutrient limits and to develop the pollution allocations for the TMDL because they “certainly [don’t] get down to the farm level.” Many in the agricultural community, he said at the meeting, “have understandably come to the conclusion: ‘Well you don’t know what’s happening on my farm. I’m not in

the model, ergo, you are not giving us enough credit for what we've done, ergo, you're penalizing agriculture.'"

Fox defended the model as being intended to make "proverbial 50,000-foot-level decisions about what is the ultimate allocations of nitrogen/phosphorus, we think, to save the Bay." However, he said, for any nutrient trading system to be effective, "or ultimately the permitting system or TMDLs to work, we're going to have to get down to a much higher degree of precision."

A consent decree with environmental groups requires EPA to complete the Bay TMDL by May 2011, but EPA and state officials say they will complete the cleanup plan by the end of 2010. EPA has set June 1 as the deadline for states to submit their phase I watershed implementation plans to allocate nutrient and sediment reduction goals to various sources. After EPA review, states will submit revised draft implementation plans by Aug. 1, with a public comment period from Aug. 15-Oct. 15. The final implementation plans are due Nov. 1, and EPA plans to publish the TMDL by Dec. 31.

Once the TMDL is issued, states will begin working on phase II implementation plans that will set more localized sediment and nutrient allocations. The goal of the Bay TMDL is to have all water quality standards implemented throughout the watershed by 2025.

Activists Seek Stormwater Retrofit Permit Provision To Guide Bay Efforts (*Inside EPA*)

4/16/2010
Environmentalists are pushing for an upcoming EPA stormwater permit for the District of Columbia to require the retrofitting of public and private properties to better control runoff, including using green infrastructure techniques, and other stringent requirements, saying the permit is likely to serve as a guide for others in the Chesapeake Bay watershed.

A coalition of 13 environmentalist groups, including Natural Resources Defense Council (NRDC), Anacostia Riverkeeper and Earthjustice, wrote March 18 to EPA Region III water official Jon Capacasa seeking a stringent draft permit that requires more enforceable limits than previously included in permits. *The letter is available on InsideEPA.com.*

Activists have touted the importance of the EPA-issued permit in serving as a model for other state-issued permits in the region, which is currently the focus of an intense effort to dramatically strengthen water quality controls. EPA has sole control over issuing the municipal separate storm sewer system (MS4) permit for the District of Columbia, while the rest of the watershed's MS4 permits are issued by states.

In the March 18 letter, the coalition says the D.C. permit is "likely to set the bar throughout the Bay. We also think that this is a great opportunity to demonstrate the promise of green infrastructure for reviving cities and their waterways in the most visible city in the watershed as well as the only one in which US EPA issues the permit."

At a Jan. 12 meeting of the Chesapeake Bay environmentalist coalition Choose Clean Water, Nancy Stoner, who at the time was the water program co-director for NRDC, asked EPA Bay chief Chuck Fox to make sure EPA recognizes its opportunity "to issue a strong municipal stormwater permit to Washington, DC." Stoner has since joined EPA as deputy assistant administrator for water.

The expected EPA Region III permit comes as Region I recently released a draft permit for areas in Massachusetts that includes first-time measures requiring public- and private-sector sources to limit runoff from parking lots and other impervious surfaces after construction is complete. The Massachusetts permit requires that "the hydrology resulting from new development to mirror the pre-development hydrology of the site or to improve the hydrology of a redeveloped site and reduce the discharge of stormwater."

An environmentalist following the Washington, DC, permit's progression says that the agency is expected to turn the permit over to Washington, DC, by the end of April.

In the meantime, activists are pushing EPA to include in the permit more enforceable, specific provisions, such as a "requirement for the permittee to list all available waste load allocations and to demonstrate how they will be achieved and by what date," the letter says.

And the groups are requesting that plans to implement pollution load limits and stormwater management plans should "become enforceable permit terms upon EPA approval of the plans, and the permit should include a strong monitoring component including stormwater volume and stream flow monitoring."

The groups want the permit to specifically require that "the controls listed in [total maximum daily load (TMDL)] implementation plans become enforceable permit terms upon approval of the plans, including interim and final compliance deadlines." TMDLs are measures of the maximum amount of a pollutant that may enter a waterbody without exceeding pollution limits, and act as a guide for discharge limits in permits for stormwater and utilities.

The groups are also asking for climate change mitigation and adaptation to be included in the permit, particularly by requiring green infrastructure to "conserve energy, minimize the need for underground storage, pumping and treatment of stormwater, minimize heat island effect, reduce sewer overflows and flooding, and increase the resilience of District waterways in the face of climate change."

Those green infrastructure requirements should be tied to numeric, observable or measurable requirements that could be enforced by EPA, the letter says.

Corps Cites EPA Mountaintop Mining Permit Veto To Justify Lawsuit Delay (*Inside EPA*)

4/16/2010
The Army Corps of Engineers is urging a key federal district court to further postpone a long-delayed lawsuit over the Corp's issuance of a controversial mountaintop mining permit in West Virginia, citing EPA's recent landmark decision to veto the already issued disposal permit in their justification for an indefinite delay in the case.

Industry had asked the U.S. District Court for the Southern District of West Virginia to resume the litigation, in which environmentalists are challenging the Corps' Bush-era permit issued in 2007 for the Spruce No. 1 mine in Logan County, WV, one of the largest mountaintop removal operations in central Appalachia. But the Corps says the case should be stayed indefinitely to allow EPA to complete its proposed veto of the mining permit.

Industry is pushing for a swift ruling on summary judgment in the West Virginia district court case, *Ohio Valley Environmental Council (OVEC), et al. v. U.S. Army Corps of Engineers, et al.*, claiming that the issues before the court over the permit have already been raised and resolved by the U.S. Court of Appeals for the Fourth Circuit. Industry cites the 4th Circuit's February 2009 ruling in *OVEC v. Aracoma Coal Company*, which upheld a host of contested, Corps-approved permits for mountaintop mining projects for a broad variety of reasons.

EPA March 26 proposed to veto the Spruce permit under Section 404 of the Clean Water Act (CWA). Keeping the case in limbo effectively keeps the mine operator, Mingo Logan Coal Co., from expanding its operations in the area beyond a smaller set of boundaries defined in an earlier compromise between the company and environmentalists, allowing EPA to continue the veto process without seeking separate court intervention to halt mine expansion.

The Spruce No. 1 permit is among 79 Corps "dredge and fill" mountaintop mining permits stalled by the Obama EPA. Mountaintop mining opponents say the practice causes environmental damage, as companies blast the tops off mountains and deposit large volumes of waste rock in nearby "valley fills," which can damage or eliminate streams.

But EPA earlier this month released detailed guidance outlining stricter water quality standards it plans to use in evaluating the permits that could force an end to most valley fills. EPA in an April 12 *Federal Register* notice said it will almost double its planned comment period for the guidance until Dec. 1, after originally suggesting a 120-day

comment period. EPA also intends to issue the final guidance by April 1, 2011. EPA will begin implementing the guidance in ongoing Clean Water Act permit reviews as comments are received, officials have said.

The Corps approved Mingo's permit for the Spruce No. 1 site in January 2007, sparking the initial *OVEC* challenge to the permit, and soon after the case was filed Mingo agreed to limit its operations to certain areas within the permit boundaries and provide plaintiffs 20 days notice before expanding their operations.

That agreement was designed to provide environmentalists sufficient time to seek injunctions to stop Mingo prior to any expansion, and the company has not yet proposed expanding its operations.

Now Mingo, a subsidiary of Arch Coal Inc., in an April 2 filing says the West Virginia district court should lift its ongoing stay of *OVEC v. Army Corps*, saying that EPA's review of the permit is not at issue in the case. Mingo argues that its inability to fully mine the permitted area is causing economic harm and that it would be an abuse of discretion for the court to grant an open-ended stay. *Relevant documents are available on InsideEPA.com.*

But the Obama administration in an April 9 reply to industry's motion to resume the stalled lawsuit countered that EPA's decision to veto the 2007 permit justifies an indefinite stay of the suit.

The Corps argues that the harms Mingo claims it is suffering from a delay in concluding the suit are superficial compared to the "potential irreparable harm to the United States" if mining operations were to commence at the Spruce site before EPA follows through with its proposed veto of the mining permit.

The administration response accuses the company of "a basic misunderstanding of the doctrine of the unitary executive," in which the Department of Justice (DOJ) represents the interests of any government agency in litigation "whether they are named as parties or not." EPA is not a party in the *OVEC* lawsuit.

An environmentalist following the issue says invoking the doctrine allows DOJ to continue arguing the case without delving into existing disagreements between the Corps and EPA over the permit at issue, which was initially approved by the Corps before EPA intervened last month with its proposed veto.

The Corps also points to earlier Mingo filings in which the company objected to further stays "on the grounds that EPA had not moved forward with" its veto authority -- "implicitly recognizing that an extension of the stay . . . would be appropriate if EPA moved forward with the administrative process," according to the government's filing.

The Corps also says that Mingo cannot complain that the court is not considering EPA's Spruce veto because the company has filled a separate suit challenging the agency's

veto decision in the U.S. District Court for the District of Columbia, rather than in the southern West Virginia district. “That case could have been filed in this District,” the government says in a footnote, adding that the company has not explained why it instead chose to file in DC. “[B]ut having made that choice, it cannot now complain that EPA is not before this court.”

In the D.C. District Court suit, *Mingo Logan Coal Company Inc. v EPA*, the company argues that EPA has exceeded its CWA authority in attempting the first-ever veto of a permit that had already been issued by the Corps. Mingo says the CWA only allows EPA to “prohibit or withdraw the specification of disposal sites before a permit is issued.”

The challenge points to relevant language in the CWA identifying EPA’s authority to “prohibit the specification (including the withdrawal of specification) of any defined area as a disposal site,” and argues that because companies are required to identify waste disposal sites in permit applications, EPA’s authority to veto permits exists only before they are issued. EPA has not yet responded in that case.

Cardin Expects To Release Revised Mountaintop Mining Bill Within Weeks (*Inside EPA*)

4/16/2010
Sen. Benjamin Cardin (D-MD) says that he and Sen. Lamar Alexander (R-TN) will within weeks unveil a new version of their legislation that aims to halt “dredge and fill” permitting of mountaintop removal mining operations, after working with EPA to ensure that the legislation will not curtail all surface mining operations.

The legislation, S. 696, the Appalachia Restoration Act, has been in limbo since last year, over concerns that its restrictions would apply to surface mining operations beyond mountaintop removal, where companies blast mountaintops and deposit excess rock in nearby “valley fills” -- a practice critics say harms waterways and surrounding communities. A Bush-era revision to the definition of “fill material” led to an increase in mountaintop removal mining, as operators became eligible for laxer permits to dispose of excess spoil.

The Cardin-Alexander bill aims to ensure that spoil from mountaintop removal mining is not included in the fill definition, without altering its application to other types of mining, but they have struggled since last year with how to most effectively define the practice they are targeting.

“We are working very closely to try to get language that accomplishes the goal we all set out, which is to end . . . mountaintop removal,” Cardin told *Inside EPA* April 13, predicting that the revised legislation would be ready “within the next week or two.”

Cardin and Alexander are remaining tight-lipped over how their bill will define "mountaintop removal mining," but sources say it could focus on the efficiency of a mining operation or the region in which such operations occur, although specific parameters remain in flux. Cardin did say the bill is unlikely to include numeric water quality standards, such as the strict conductivity limits EPA outlined in an April 1 guidance memo to protect water quality from mountaintop removal (*Inside EPA*, April 9).

The continued work with EPA follows the agency's 2009 proposed narrative mountaintop removal definition that sources say was criticized by stakeholders on both sides of the issue.

Discussions are ongoing between aides to the senators, EPA officials and outside stakeholders to determine whether it is possible to craft an effectively focused narrative definition in the legislation, or whether the bill will rely on other criteria, such as the ecological region or elevation of a mining operation, a numeric efficiency standard based on the ratio of spoil generated per ton of coal mined or some other measure.

Part of the problem in arriving at a definition for mountaintop removal is that the term means different things to various stakeholders. An environmentalist tracking the issue says activists have used the term "in a very broad way to mean surface mining on steep slopes in Appalachia."

However, the Cardin-Alexander bill is likely to be narrower in scope to target only mining that -- as Alexander described it in a brief April 13 interview -- "is blowing off the tops of mountains and dumping it in streams."

A discussion draft of the legislation floated last year modified the Clean Water Act (CWA) by defining mountaintop mining as removing "the upper portion" of a mountain to expose one or more coal seams and disposing the excess spoil "in heads of hollows, valleys or streams." The draft exempted the debris from the definition of a fill material, but that section relied on a section of the Surface Mining Control & Reclamation Act applying to all surface mining, leading EPA and others to conclude it would impact all surface mining, not just mountaintop removal.

The discussion draft was a modification of an earlier version that the Congressional Research Service had concluded would also apply more broadly than just to mountaintop removal mining.

In response to a request from the senators, EPA last year proposed legislative language outlining a definition of mountaintop removal mining as the "removal of an entire coal seam from outcrop to outcrop or seams running through the upper fraction of a mountain, ridge, or hill by removing substantially all of the overburden off the mine bench," and declaring that fill material does not include "mining overburden generated" by the practice. But sources say industry stakeholders complained that EPA's definition would still affect too many mining operations beyond just mountaintop removal, while

environmentalists worried it was too narrow and would not properly curtail all mountaintop removal.

The pending legislative revision follows several steps by EPA in recent weeks to limit mountaintop mining, including a first-ever veto of an already-issued mountaintop mine permit and the release of long-awaited guidance setting strict water quality limits that the agency says will eliminate most "valley fills" from future permits. The senators and environmental activists say they are pleased to see EPA moving to restrict mountaintop removal mining but that the legislation is still necessary to prevent a future administration from reversing the efforts.

Environmentalists have separately been pushing the Obama EPA to revise the Bush administration's 2002 revision to the definition of "fill material" to include material that would "raise the bottom elevation of any portion of the water." The change led to an expansion of mountaintop removal mining as mine operators were able to dispose of excess spoil using "dredge and fill" permits issued by the Army Corps of Engineers under CWA Section 404, because fill material is exempted from requirements for stricter EPA-issued section 402 pollutant discharge permits.

By limiting their bill to just mountaintop removal mining, Cardin and Alexander are steering clear of the broader debate over the fill material definition, which has applied to a range of mining practices. -- *Nick Juliano*

Markey Urges EPA To Consider Antibiotic Resistance For Safe Water Rules (*Inside EPA*)

4/16/2010
Rep. Edward Markey (D-MA) is urging EPA to consider antibiotic resistance as a factor when assessing chemicals for possible Safe Drinking Water Act (SDWA) regulation, part of the lawmaker's broader call for EPA and the Food & Drug Administration (FDA) to take regulatory actions to reduce exposure to the chemical triclosan.

Markey, chair of the House Energy & Commerce Committee's environment panel, announced April 8 that he intends to introduce legislation designed to reduce exposure to the antimicrobial chemical triclosan, which is used in soaps and many other products. Markey called for a ban on most uses of triclosan, citing recent correspondence with EPA and FDA that he says shows that they agencies raised "serious concerns" about the use of the chemical.

"I plan to introduce legislation that will mandate that EPA more quickly test and regulate chemicals such as triclosan that have serious health implications, particularly for children," Markey said in an April 8 statement.

Prior to the bill's introduction, Markey said EPA should take steps to evaluate "the potential of drinking water contaminant candidates to contribute to antibiotic resistance when considering or taking regulatory actions under the [SDWA]" according to a set of recommendations included in Markey's statement.

One option could be for EPA to add antibiotic resistance as a factor it considers in setting its Candidate Contaminant List (CCL) for chemicals. The CCL, now in its third iteration known as CCL3, is a list of contaminants that are currently not subject to any proposed or promulgated national primary drinking water regulations, but are known or anticipated to occur in public water systems, and which may require regulation under SDWA.

Markey previously sent a Jan. 5 letter to EPA asking for information on the regulation of triclosan, and in that letter asked whether EPA considered antibiotic resistance in setting the CCL3. *Relevant documents are available on InsideEPA.com.*

EPA responded in a March 5 letter that it did not include antibiotic resistance as a factor for the CCL3 issued in October 2009. The agency said it evaluated triclosan and the related chemical triclocarban, but determined they "did not present as great a public health concern in drinking water" as the chemicals selected for CCL3. EPA says it will continue to evaluate triclosan and triclocarban for future CCLs and "will utilize any new data that become available." The next CCL is expected by 2014, the letter says.

EPA also said it did not include triclosan and triclocarban on the CCL3 because the "limited available data" showed the chemicals "were not as likely to be present in drinking water at levels that may require regulation."

"EPA relied on quantitative occurrence and health effects data to evaluate contaminants for the CCL 3," according to the letter, signed by Steve Owens, head of EPA's toxics office. "More research is needed to assess and identify those contaminants that would have the greatest potential for increased widespread antibiotic resistance. More research would also be needed to develop methodologies for how this type of data could be used to modify the CCL process to allow for evaluation and comparison of health effects data amongst contaminants."

Markey April 8 also called on EPA and FDA to take regulatory steps to ban the use of triclosan in products that "are intended to come into contact with food," and for EPA and the Consumer Product Safety Commission to ban triclosan in products "marketed for children aged 12 and under," the statement says. Further, Markey says "EPA should act more quickly -- well before 2013 -- to reevaluate its rules surrounding all uses of triclosan."

In the March 5 response to Markey, Owens said EPA plans to continue with its previously planned reassessment in 2013 of triclosan's Reregistration Eligibility Decision (RED) under the Federal Insecticide, Fungicide, & Rodenticide Act, which will occur 10 years sooner than required by the agency for most pesticides.

EPA also says it has identified additional studies that pesticide registrants will have to complete that will focus on the acute and chronic ecological effects of the substance.

Environmentalists and wastewater industry officials have long been concerned about the potential adverse effects of triclosan and have urged EPA to strictly regulate it as part of the pesticide registration process to limit exposures. For example, last year the group Beyond Pesticides and Food & Water Watch filed a petition, asking EPA to suspend -- and eventually cancel -- non-medical uses of the chemical.

But a source with the Soap & Detergent Association says, "There is no real-world evidence showing use of those products leading to antibiotic resistance." Further, EPA and FDA have a "wealth of data showing a germ-killing benefit" in the products, as well as environmental and human health safety.

EPA in the response to Markey also outlines a number of steps that it is taking to bolster its consideration of the risks of triclosan using a wide variety of statutes -- which could fit in with EPA Administrator Lisa Jackson's recently stated goal of "leveraging" various environmental laws to address drinking water contaminants.

In a March 22 speech to the Association of Metropolitan Water Agencies, Jackson said the agency would "take common sense steps that make the most of EPA's broad-reaching programs" to regulate drinking water contaminants.

"Rather than having these programs working in silos, we want to bring them together where they overlap," Jackson said. "With FIFRA -- the Federal Insecticide, Fungicide, & Rodenticide Act -- we can use pesticide registration to assess drinking water risks, generate missing data and develop analytical methods for drinking water regulations. Under TSCA -- the Toxic Substances Control Act -- we can use EPA's chemical action plans to identify and address drinking water issues posed by widely used chemicals. This means that we can stop contaminants before they get into drinking water -- a safer and cheaper alternative to getting them out of drinking water."

According to EPA's letter, the Office of Research & Development has conducted six of the 11 assays for triclosan required under tier 1 of the Endocrine Disruptor Screening Program, a recently launched effort to screen for endocrine effects of pesticides that was mandated by Congress under the Food Quality Protection Act. "Based on these screening studies, EPA has additional work underway to further characterize the early results of these studies," the letter says.

Future work will focus on "higher levels of testing," which could affect the RED, EPA says. The agency will conduct studies "to aid both EPA and FDA in better characterizing these endocrine related effects, including toxicological effects, human relevance, and the doses at which they occur to determine if levels of human exposure are safe or not." EPA is also conducting studies to reaffirm agency conclusions regarding thyroid effects from triclosan.

Owens said EPA is updating its 2008 assessment of triclosan exposure to include recently released biomonitoring data from the Centers for Disease Control & Prevention. "Once completed, EPA will provide its revised assessment in the public docket, and revisit its regulatory decisions, if the science supports a change," Owens wrote.

EPA also says it is doing additional research on the potential health effects of triclosan on the endocrine system. "This research is underway and will help characterize the human relevance and potential risk of the results observed from initial laboratory animal studies," the letter says. -- *Aaron Lovell*

SAB Says Resource Limits May Narrow EPA Fracking Lifecycle Study (*Inside EPA*)

4/16/2010
EPA's science advisers are backing the agency's controversial plan to take a lifecycle approach in its upcoming study of the drinking water risks of the natural gas drilling process called hydraulic fracturing, or fracking, but the group says EPA may need to narrow its focus to the most important issues due to the agency's time and budget constraints.

The agency's Science Advisory Board (SAB) panel on environmental engineering met April 7-8 in Washington, DC, to provide advice on EPA's plan for the study, which Congress sought in non-binding language in the agency's fiscal year 2010 appropriations. EPA says the study could inform short-term voluntary actions, including potential best management practices (BMPs), to reduce drinking water threats from fracking (*Inside EPA*, April 9).

More broadly, the eventual results of the study -- and EPA's efforts to develop voluntary steps to reduce fracking's risks -- could inform ongoing debate over whether EPA should have authority to regulate fracking.

EPA has proposed to take a lifecycle approach in the study by assessing the drinking water impacts from the fluids, waste and emissions associated with the practice, in which water, sand and chemicals are injected underground to break rock formations and release gas. The agency plans to have initial results from the study by the end of 2012.

SAB panelists at the meeting generally backed the idea of using a lifecycle approach in the study. "The concept of lifecycle is a good organizing principle for laying out what would be the research approach that EPA would use here." John Connolly, an engineer for the environmental consulting firm Anchor QEA, said.

The panel plans to have a draft report outlining its recommendations prepared three weeks before the next meeting of the full SAB committee, scheduled for June 15, where the report will be discussed.

The advisers also cautioned that EPA's limited budget and time-frame for conducting the study will likely require the agency to focus its study on areas where it might take regulatory or other action depending on the study's results. "On the issue of metrics and boundaries . . . I think it really has to focus on informing EPA in places that it could be making decisions," James Shortle from Pennsylvania State University said.

In light of these constraints, the panel argued that EPA should whittle down the long list of research ideas laid out in its draft study plan to focus on a number of fundamental questions. The highest priority issues are characterizing what is in the fracking fluid before it is injected underground and what is in the mixture of fracking fluid and produced water that is brought back up after fracking, as well as exposure pathways and the risk of that exposure.

"A major take-home message here is focusing efforts on sources and pathways and exposure is the chief recommendation," David Dzombak, a professor at Carnegie Mellon University and chair of the panel, said.

Under this approach, the advisers recommended that EPA focus on a number of issues, including the site-specific factors that affect potential risk and how to assess that risk, the quality and quantity of injected and flowback fluids, the physical and chemical processes for each phase of the lifecycle above and below ground and the risk that fracking will affect surface and subsurface pathways that could lead to exposure.

Army Corps may underestimate Mississippi flooding risks -- study (*Greenwire*)

04/15/2010
Attempts by the U.S. Army Corps of Engineers to compensate for new methods of measuring Mississippi River water flows may have caused the agency to underestimate the current likelihood of flooding, according to a new study.

The U.S. Geological Survey took over responsibility for the measurements from the Army Corps in the 1930s, measuring water flows from bridges rather than boats. Decades-old data were tweaked after tests suggested that the old measurements had overestimated flood risks.

Nicholas Pinter, a geology professor at Southern Illinois University, said the previous measurements had in fact understated the water flows and risk. The decision to scale back the figures could cause government agencies to expect lower high-water levels in the future, leaving them unprepared for floods, he said in a study published last month in *Hydrological Processes*.

"If you lower the numbers for the size of past floods, then present and future risk is reduced proportionally," Pinter said.

Critics of Pinter's research say the Army Corps made the proper adjustments for problems with earlier measurement methods. Tests using scale models found that water flows during floods in 1844 and 1903 could not have been as heavy as the previous techniques had determined, said Gary Dyhouse, a retired Army Corps hydrologist who consults for the agency on Mississippi River flooding issues.

"Obviously, we'll never know what the exact discharge was in 1844," he said (Matthew Wald, *New York Times*, April 14). **– GN**

Researchers find garbage patch in the Atlantic (*Greenwire*)

04/15/2010
Scientists say they have discovered the "great Atlantic garbage patch," a stretch of plastic debris spanning thousands of square miles.
The patch, discovered by two groups of scientists trawling the ocean, is similar to one between Hawaii and California in the Pacific Ocean. Researchers say other garbage patches are likely in other areas of the globe.

The floating garbage in the Atlantic is held together by currents between Bermuda and the mid-Atlantic Azores islands.

The research teams first reported their findings at the 2010 Oceans Sciences Meeting in February. With no realistic way to clean the oceans, researchers say the best they can do is map the pollution and encourage people to not discard nonbiodegradable materials.

"Our job now is to let people know that plastic ocean pollution is a global problem -- it unfortunately is not confined to a single patch," said Anna Cummins, one of the researchers who studied the Atlantic patch.

Much of the trash has broken into tiny pieces or was small to begin with. That poses a threat to fish and birds, since the trash can be confused with plankton. The plastic can also sponge up harmful chemicals in the ocean water.

A paper cited by the U.S. National Oceanic and Atmospheric Administration says as many as 100,000 marine mammal deaths every year could be related to trash (Mike Melia, AP/*San Francisco Chronicle*, April 15). **-- JP**

Judge threatens agencies with contempt over water pollution (*Greenwire*)

04/15/2010
Suggesting that state and federal agencies could be held in contempt for their handling of pollution in the Florida Everglades, a federal judge in Miami has ordered U.S. EPA Administrator Lisa Jackson to testify in October about how the agency plans to enforce the Clean Water Act.

U.S. District Judge Alan Gold ruled yesterday that EPA has failed to make the Florida Department of Environmental Protection and the South Florida Water Management District comply with laws and orders limiting discharges of phosphorus, most of which comes from fertilizer runoff.

He gave federal regulators until Sept. 3 to craft a new enforcement plan.

State agencies missed a deadline, set in 1994, to reduce phosphorus levels in the Everglades to 10 parts per billion (ppb) by 2006. Recent tests showed phosphorus levels ranging from 13 to 93 ppb in the district's six stormwater treatment areas.

"None of the governmental agencies involved directly told the public the hard truth: we have not solved the problem, we do not know for sure when the problem will be solved, and we do not know if the Everglades will survive by the time we can meet the 10 ppb standard," Gold wrote in his ruling.

Florida intends to appeal the decision, state water and environmental officials said in a joint press release. They defended the state's permitting process, saying it is "protective of the Everglades" and complies with the Clean Water Act.

EPA said it plans to respond to the ruling today (Christine Stapleton, *Palm Beach* [Fla.] *Post*, April 14). **-- GN**

Posted on Thu, Apr. 15, 2010

KC moves ahead on massive sewer deal (*Kansas City Star*)

By LYNN HORSLEY The Kansas City Star
The Kansas City Council votes this afternoon on a proposal to authorize a consent decree with the federal government for a massive, $2.5 billion overhaul of the city's aging sewer system.

The council's Transportation and Infrastructure Committee gave its blessing this morning to the settlement, which allows a 25-year implementation schedule for the city's sewer overflow control plan. The plan is required because the federal government alleges Kansas City has been polluting rivers and streams with its sewer overflows.

“Good work,” Committee Chair Terry Riley said, commending city staff for negotiating with the Environmental Protection Agency a longer sewer repair timeframe than any other city has received.

That longer schedule will allow the city to spread out the costs over more years, thus somewhat reducing the serious financial impact on Kansas City’s sewer rate payers.

In addition to providing for a 25-year schedule, the consent decree sets out a schedule for the huge amount of work that must occur. The project will involve both the installation of huge tunnels and new sewer pipes, along with “green solutions” — environmentally progressive, natural landscaping approaches designed to improve water quality.

The city also agreed to provide funding to help about 500 low to moderate income families on septic systems hook up to nearby sewers.

(See the attached consent decree.)

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Posted on Thu, Apr. 15, 2010

EPA rules could bankrupt small businesses (*Sun Herald*)

By ANITA LEE
GULFPORT — Harrison County is spending $246 million in federal Katrina money for water and sewerage systems, but has no money to run lines that would allow businesses to connect to those systems.

As a result, business and residential growth could be stifled along emerging corridors such as Mississippi 67 north of D’Iberville. Businesses in the past have dug their own wells in areas without county or city service, but the Legislature has adopted new EPA regulations that will make those wells cost-prohibitive for mom-and-pop businesses. The state Health Department said it is already enforcing the rules for new and existing businesses will have to comply with by 2014, although many are unaware of this.

“Water, water everywhere and not a drop to drink,” Harrison County Supervisor Connie Rockco told members of the county Utility Authority on Thursday morning. Rockco brought to the meeting a Health Department representative and a new business owner on Mississippi 67 who sits between two water tanks funded by the federal Katrina money. There is no money for a system to distribute the water, which is also the case with other new water and sewerage systems being funded.

“I am no closer to water than I was 14 months ago when I started begging you guys for water,” said David White, who hopes to open a service station and cafe in July. That’s

also when he has to start paying on a $1.4 million loan on the new business. He already has spent $55,000 on a sewer system.

“I’m getting very, very nervous,” White said.

The Utility Authority, composed of mayors from the county’s five municipalities and two county supervisors, unanimously adopted a resolution that asks the state Legislature to put a moratorium on compliance with the Environmental Protection Agency rules until 2014. The Legislature reconvenes next week.

Pansy Maddox of the Health Department warned the county needs to be ready for 2014. She said the EPA rules will then apply to well more than 100 businesses in unincorporated areas and in annexed areas of municipalities not yet served by public water. Golf courses, restaurants, Head Start and day-care centers, RV parks and many more businesses will no longer be able to use their water wells. Most also will be unable to spend hundreds of thousands of dollars on new wells and regular monitoring the EPA requires. The rules are designed to protect groundwater supplies.

“We’ve got to start now with distribution lines,” Maddox told the authority. “I could just go on and on with a list of businesses that are caught up in this.”

Mayor George Schloegel said he will be visiting this morning with Gov. Haley Barbour to discuss the problem. Fellow board member Marlin Ladner said the county is searching for money to finance water distribution and sewage collection.

The Mississippi Department of Environmental Quality, which is overseeing the federal Katrina projects, decided the money should go for infrastructure countywide. According to DEQ, there was not enough funding to cover water distribution and sewage-collection lines as well.

White did wind up with a temporary fix, although it will cost him. He will be able to drill a well for $20,000 under the old rules because he started construction on his business before the state adopted the EPA guidelines.

He will have to meet monitoring requirements for the well, however, which will cost $6,000 to $9,000 a year.

“The state is going to let me dig a standard well,” White said, “but I still have four years to tie in to a water system and I haven’t been able to get anyone to commit to running a water line to me. I don’t know if you would call this a happy ending or a stay of execution.”

Article published April 16, 2010

State issues 1-year permit for dredging (*Toledo Blade*)

Shorter term intended to keep talks open with Army Corps
By TOM HENRY
BLADE STAFF WRITER

The 25-year-old debate over what to do about sediment dredged from the Toledo shipping channel will continue for at least another year.
The Ohio Environmental Protection Agency yesterday issued a status-quo permit for the massive project undertaken each June by the U.S. Army Corps of Engineers.
The corps is the federal agency that keeps America's navigable waterways from getting clogged.
Toledo is the shallowest and most heavily dredged Great Lakes harbor.
If the corps doesn't maintain enough clearance for ships to pass, the Port of Toledo would be forced to close - costing the region billions of dollars in trade.
Ohio EPA Director Chris Korleski said that's a consequence no government official wants to fathom, especially in today's economy.

So the question never has been whether to dredge, but what to do with the silt.

Since 1985, the state of Ohio has been at odds with the corps - sometimes in court - over the federal agency's practice of dumping most of what it pulls from the Toledo harbor back out into Lake Erie's North Maumee Bay, one of the region's most productive fish nurseries.
The corps' position, to save money, has been to hold out only the material that's too polluted to go back into the lake.
That's typically 100,000 to 300,000 cubic yards - the equivalent of 10,000 to 30,000 truckloads - of the average 900,000 cubic yards dredged annually. It gets buried in a waterfront landfill in Oregon known as a confined disposal facility.
The cost of another such landfill carries a $200 million price tag. The federal government has said that building the next one will require a 35 percent local match - roughly $70 million. State and local officials say they can't afford that.
Records show about 600,000 or 700,000 cubic yards get redeposited 3 1/2 miles northwest of Toledo Harbor Light.
Fishery biologists have cited problems with the lake's ecology from the loose sediment, even if the dredging material is not contaminated.
Lake water specialists question if turbidity generated by the floating soil is at least partly responsible for the growth of algae in Lake Erie's western basin recently.
While the corps continues to act within its authority, a cross-section of scientists, activists, and public officials question whether its practice of open-lake disposal could affect the region's fishing, boating, recreation, and tourism industries, as well as property values.
"While I certainly feel compelled to keep the port functioning, I cannot overstate my concerns about the environmental impacts likely resulting from the annual disposal of large amounts of sediment in the shallow western basin of Lake Erie," Mr. Korleski said.
He said officials from the Ohio EPA will continue to work with the Ohio Department of Natural Resources and other agencies on identifying ways to reuse the sediment. But

he offered no concrete solutions."Like a lot of environmental issues, it's a money issue," Mr. Korleski said.
The permit that the Ohio EPA issued allows up to 800,000 cubic yards to be redeposited in the lake.
That's even more than what the corps typically has deposited in recent years, though nearly 2 1/2 times less than what the corps had requested.
The corps originally sought authorization to remove 2 million cubic yards from the Toledo shipping channel each summer through 2012, and wanted to put up to 1.9 million cubic yards of that back into the lake each year.
Under that scenario, only 5 percent of what it dug up might have been kept from the lake.
The Ohio EPA and the corps are part of a task force that has been meeting in recent years to identify solutions that are practical and more environmentally friendly. It grew out of past tensions.
Bruce Sanders, corps spokesman, last night issued a statement saying the agency will continue to operate "in an open and collaborative manner to find solutions that are technically sound, environmentally sustainable, economically justified, and are within the authorities and funds available to the Corps."
Said Mr. Korleski: "This is not us versus them."
The Ohio EPA limited the length of the permit to one year.
It has issued permits of three and five years in the past. The shortened time was to send the corps a message that the state agencies want to keep the discussion on the table, Mr. Korleski said.
"I would like to think there are things we could do with this soil," he said.
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Stormwater pond to be built on old landfill (*Herald Times Reporter*)

Resident concerned about hazardous waste;
DNR, EPA monitoring

By Cindy Hodgson • Herald Times Reporter •
April 16, 2010

TWO RIVERS — Longtime resident Ronald Carrier believes there is hazardous waste underground at the site of one of the stormwater detention ponds under construction in the city.

Wentker Pond, being built at Riverside Park on the city's west side, is on the site of a municipal dump that operated from 1938-61.

Carrier listed numerous types of hazardous waste he believes were dumped there, including barrels of paint, paint thinner, motor oil, battery acid, nitric acid, sulfuric acid

and benzene, which is a degreasing fluid.

He said he used to spend time at the dump with his grandfather, Elmer Carrier, who was in charge of it.

"Nobody really knows what's in there," said Annette Weissbach, a hydrogeologist with the Wisconsin Department of Natural Resources' Remediation and Redevelopment Program.

However, Weissbach said testing at the site has not revealed any hazardous waste. She said samples were put through a Toxicity Characteristic Leaching Procedure to test for characteristics of hazardous waste, and they "didn't fail the test."

Because the site is a landfill, the city needed an exemption from the DNR to build the pond there.
The DNR granted the exemption contingent upon numerous conditions.

"They have to handle it appropriately," Weissbach said. "It has to be properly dewatered."

The pond must be lined on the bottom and sides with a high-density plastic liner, she said.

The city must collect a waste sample every 2,500 cubic yards and have it tested to determine whether it is hazardous.

If hazardous waste is found, it doesn't mean the city cannot continue building the pond. It means the waste couldn't go to the landfill in Whitelaw but would need to go to a licensed hazardous waste landfill, said Walt Francis, an environmental scientist with the Environmental Protection Agency's Land & Chemicals Division, Resource Conservation Recovery Act Branch.

A major concern with hazardous waste is that it will contaminate groundwater and impact nearby wells, but Weissbach pointed out this landfill is in the city and residents don't have wells because they are on the municipal water supply.

Carrier contends the city should have to clean up the entire dump, not just the portion that will be
excavated to build the 1.24-acre pond.

Weissbach said the DNR cannot require the city to clean up the entire dump. She also said excavating isn't typically the method chosen to remedy the problem of an old dump. A more common method is to make sure the area is capped — covered with clay or an impermeable soil, then covered with topsoil and seeded with field grass — so water can't seep into the ground and disturb the waste.

Carrier's concern is that disturbing the landfill to build the pond will cause the waste nderground to leak into the nearby West Twin River. He believes the leaking has been ongoing but the disturbance will increase it.

Greg Tilkens, a hydrogeologist with the DNR's Waste & Materials Management Program, said the DNR has taken photos of "potential leachate" near the site of the storm water pond. The photos show something leaking into the river, Tilkens said.

The EPA is keeping an eye on the problem. After Carrier contacted the agency, it sent a representative from its Green Bay office to walk the site with Carrier.

Kathy Clayton, an on-scene coordinator with the EPA's Region 5, said she didn't see anything leaking when she was here but that it was very dry and she told Carrier she would come back after it rains.

Carrier also is concerned about methane gas. In a letter to the city, the DNR mentions the potential for methane gas, which is explosive, to be present when solid waste is decomposing.

However, Weissbach said "it's pretty unlikely here" because of the age of the landfill and the burning that occurred when it was a dump.

While Weissbach said it is "a bit unusual" for a municipality to build a storm water pond on a
landfill site, she sees some positives to it.

"At least some of the waste will be removed," she said.

The DNR is taking all of the precautions it is aware of, according to Weissbach.

Francis said the project is under the DNR's authority but the EPA would step in if hazardous waste is found and the agency believes the DNR isn't responding appropriately.